



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**THE STRATEGIC VALUE OF HUMANITARIAN  
IMMIGRATION POLICY TOWARD HOMELAND  
SECURITY**

by

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March 2008

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**THE STRATEGIC VALUE OF HUMANITARIAN IMMIGRATION POLICY  
TOWARD HOMELAND SECURITY**

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## **ABSTRACT**

The United States faces a terrorist threat provoked by an extremist ideology. A greater, more strategic, contribution to the global good would reduce anger toward the United States and enhance constructive alliances. After the events of September 11, 2001, homeland security leaders identified our immigration system as a vulnerability exploited by the terrorists. Consequently, much effort was expended to shore up immigration processes. That same system should also be used as a mechanism to mitigate some of the causes of terrorism. Within U.S. immigration priorities is a commitment to humanitarian protection. Benefits such as resettlement of refugees, grants of asylum, and temporary protected status for victims of armed conflict or natural disasters do not only uphold the moral fabric of the United States. They also provide strategic value toward winning the war against violent extremism. Designing a strategy for humanitarian immigration policy, with the proper risk management principles in place, will promote the long-term security for the United States.

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## **I. INTRODUCTION**

Much has been written in recent years about the evolving concept of homeland security. Academics and policy makers alike argue the necessity of shifting the national policy making focus to the prevention of terrorism rather than devoting the bulk of our resources to our response capabilities. Obvious elements of prevention include operational methods such as heightened security measures for our transportation systems and the collection and analysis of intelligence on individuals and groups who intend to harm the United States. Certainly, these methods, when successfully employed, can serve to prevent a terrorist attack. They do not, however, eliminate or even mildly address the underlying reasons for the terrorism. True prevention involves determining the root causes of terrorism and then engaging in activity that neutralizes those conditions. If we can identify and then mitigate the root causes of terrorism, we will ensure much greater security in the long run.

This thesis is meant to inspire hope and confidence in our capacity as a country to significantly reduce the threat we currently face. Its purpose is to offer a new framework for how we view the homeland security mission and to identify opportunities for us to more insightfully utilize American values and traditions to enhance our future security.

This thesis seeks to identify some tools for the prevention of terrorism. One thesis cannot outline an entire prevention strategy. Rather, it will select a specific set of tools and describe how they may be employed more optimally than is presently the case. The primary subject of this thesis will be the use of humanitarian immigration programs to enhance the grander homeland security mission of the United States. Humanitarian immigration policies, such as those devoted to refugees and asylum seekers, may not seem to have as direct a link to prevention as airport screening and highly honed interrogation techniques. Nonetheless, they provide ample opportunity for the United States to prevent threats to our physical security and to embody the values upon which our country was founded and has thrived. This thesis will argue the importance of humanitarian immigration programs to the long term health of our country. It will also define the elements of a national strategy for humanitarian immigration policy and will

describe concrete steps that the federal government can take toward more innovative and effective use of these programs and their associated resources.

To lay out the framework and direction of this thesis, it is necessary first to identify the assumptions surrounding the concept of homeland security which influence the thinking behind this paper. Homeland security, as a discipline and as a national goal, has been evolving over the last few years and it has been interpreted in multiple ways. There is no real national consensus on a definition for homeland security, but for the purpose of this thesis, it is perceived as a state that relies upon physical security but includes a great deal more. Physical security is fundamental to homeland security and is achieved with the prevention of terrorist acts. Of equal importance to physical security is the requirement that homeland security also include less concrete elements such as the protection of our national values and the promotion of our economic and cultural prosperity.

#### **A. THE RESEARCH PROBLEM: WHY IS THIS ANALYSIS NECESSARY OR HELPFUL?**

In 2008, on the eve of a new presidential election cycle, many individuals and organizations have published competing perspectives on how the new administration should frame and address the terrorist threat. Each of these opinion pieces, articles, and books seeks to define a new strategy toward securing the safety and prosperity of our country. We have learned much since the tragedies of 2001, and our policies and practices must swiftly follow our new knowledge. This thesis seeks to partner the new ideas of the last six years with some policy and tactical tools already at our disposal to move the national debate and our opportunities for enhanced security even further.

As a country of immigrants, the United States has a tradition of providing protection to individuals who face persecution in their country of origin. It is a principle of American democracy to promote human rights and freedom from tyranny for all people, not just those who are already citizens of the United States. Sometimes, the most appropriate way to protect those values is to provide shelter to the most oppressed. This fulfills not only a moral obligation in providing protection to the persecuted, but can also enhance our greater homeland security efforts. Currently, the United States does conduct

humanitarian immigration programs, but there is no clearly defined relationship between them and the grander homeland security mission. In fact, while there is a great deal written about challenges with humanitarian programs such as refugee resettlement and our asylum process, and there is even more written about how we should reframe our homeland security strategies, there is almost nothing published on the real relationship between the two concepts. This thesis seeks to fill that research gap. It will identify what the appropriate connection should be and then will define a humanitarian immigration strategy and operational objectives that will enhance our national homeland security efforts.

We know that we face a terrorist threat. We have also established that vulnerabilities in our immigration system can contribute to that threat. Although our immigration system can expose us to risk, it also contributes to the progress of our economy. Additionally, our immigration processes allow us to provide a safe haven to those facing persecution in their homeland. When we free others from persecution, we can contribute to the greater good, perhaps improving our image in the international community. However, if we are not careful, we may actually provide a free pass to an individual planning to do us harm. There are costs to our generosity, and there are benefits. How do we determine whether the benefits outweigh the costs or whether we have exposed ourselves to undue risk?

## **B. CURRENT CHALLENGES IN MAKING POLICY DECISIONS**

These questions are not purely theoretical. The United States regularly faces the challenge of making decisions regarding populations in the midst of a humanitarian crisis. Among the options available to the United States government are immigration-related tools. In recent years, a few particular incidents have required complex consideration with regard to what steps the U.S. should take.

An issue receiving much attention in recent months has been the plight of Iraqis fleeing their homeland in response to the violence between U.S. forces and local insurgents. Media attention has focused on Iraqi translators and other employees of the

U.S. government who face danger because of their association with the United States. Additionally, a report published by the United Nations High Commissioner for Refugees (UNHCR) states the following:

As of September 2007, there were believed to be well over 4 million displaced Iraqis around the world, including some 2.2 million inside Iraq and a similar number in neighbouring countries (in particular Syria and Jordan) and some 200,000 further afield. Around one million were displaced prior to 2003. The ability of neighbouring states to handle such larger numbers is close to breaking point...Over the past year, Iraqis have once again become the leading nationality seeking asylum in industrialized countries, with 22,200 Iraqis applying for asylum in 2006 and 19,800 during the first six months of 2007. However, some 95 percent of uprooted Iraqis are still located in the Middle East.<sup>1</sup>

The Iraqi situation poses several questions for the United States government. Do we have a responsibility to resettle a certain number of Iraqis in the United States? Would it be more desirable for those who have fled to wait out the violence and then return home to Iraq? What obligation do we have toward Syria and Jordan? Should former employees of the U.S. government be given higher priority for resettlement? Can we look to other industrialized countries to join us in making multilateral decisions about the displaced populations? How do we ensure that among those Iraqis we choose to resettle there are not terrorists?

A second recent humanitarian crisis involves the displacement of thousands of Sudanese because of armed conflict in their country. Sudan not only has its own displaced population: it also hosts refugees from neighbors such as Chad, Ethiopia, and Eritrea. In Southern Sudan, as a result of the Comprehensive Peace Agreement of 2005, some displaced persons are returning home. However, in late 2007, there continued to be more than 160,000 Sudanese refugees awaiting repatriation in Egypt, Ethiopia, Kenya, Uganda, and other countries.<sup>2</sup> There continues to be violence in the Darfur region and the instability makes it difficult for humanitarian agencies to operate effectively.

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<sup>1</sup> *Statistics on Displaced Iraqis around the World* (Geneva: United Nations High Commissioner for Refugees, September 2007), 1.

<sup>2</sup> *UNHCR Global Appeal 2008-2009* (Geneva: United Nations High Commissioner for Refugees, December 1, 2007), 125.

As it does with Iraq, the United States government faces many policy questions regarding Sudan. What is the proper role for the U.S. government? Would the situation become more stable if some of the refugees or displaced persons were settled elsewhere? Is it more effective to provide funding to international organizations rather than become directly involved? Is there a Sudanese population within the United States expressing a common position on the issue? Is the instability in Sudan in any way a threat to U.S. national security?

This thesis is not intended to provide policy recommendations specific to the two humanitarian crises listed above. The situations are too dynamic to be addressed in an academic paper written over several months. These examples are cited to demonstrate the breadth of policy questions that the United States must answer as it navigates through its homeland security decisions and the multiple facets of the immigration debate. Daily, our leaders are faced with decisions that will affect not only those in the midst of humanitarian crisis, but also our own American citizens and the perception of our country abroad. The purpose of this thesis is to enhance the discussion on the framework that the United States government should establish prior to humanitarian crises so that during an actual event, the decision-making can be carried out with rigor that is consistent with a larger national strategy. This thesis will also suggest elements of this framework that will not only enhance our humanitarian efforts but also design them in a way that best serves our homeland and national security goals.

The examples listed above have already occurred or are occurring even as this thesis is published. Each of them has implications for our homeland security mission because a wrong decision could allow a terrorist to enter our country. A bad decision could also incite greater dislike of the United States and encourage others to engage in terrorism. A well constructed decision could improve the image of the United States, gain us allies in the international community, and even potentially decrease the pool of likely terrorists.

Eradicating terrorism is a priority of our national homeland security strategy. But it is not the only goal: other hazards threaten the security of our country and they must be considered as well when creating a strategy for humanitarian immigration policy. For

example, the detonation of a nuclear device in another country could incite a mass migration that could create security concerns for the United States. The spread of a pandemic virus could also affect migration patterns bringing not only streams of fleeing immigrants, but also disease across our borders. The effects of climate change on expanding deserts or diminishing islands could also create humanitarian crises leading to large numbers of displaced persons. This thesis will propose the beginning of a larger humanitarian immigration strategy suited to future policy decisions.

### **C. FROM WHICH RESOURCES CAN WE DISTILL THE SOLUTION?**

In trying to identify the appropriate elements for a national strategy for humanitarian immigration policy, one will encounter multiple sources of useful information and ideas. In fact, there is so much material available that the true challenge involves limiting the enormous scope of information to what contributes most to the analysis.

This thesis will examine both the theory and practical evidence from multiple perspectives. First, it will review the recent literature on homeland and national security to identify the direction and parameters for innovative and effective policy making. This literature review will show that there is clearly a place both for humanitarian principles and for improvements to the immigration system in the greater homeland security mission and strategy. The literature review will close with a description of additional points and concepts collected through interviews with immigration and homeland security practitioners. Chapters III and IV will examine the current immigration landscape in general and then, more specifically the challenges and opportunities surrounding humanitarian immigration programs.

To draw some wisdom from the theory and related historical policies, Chapter V will review the experience of three countries where the United States has employed humanitarian immigration tools, both as a relief for human suffering and as a mechanism toward furthering our foreign policy goals. Chapter V will begin with a discussion of the large scale migration that emanated from Vietnam in the 1970s. Then it will examine mass migration from Cuba in 1980 and then finally the displacement of persons in

Somalia during the 1990s. Each of these examples will provide a practical look into how the U.S. conducted humanitarian immigration policy and what can be learned from the successes and failures of each event.

Finally, the closing chapters of the thesis will identify future challenges in which this information could be successfully deployed, synthesize all of the information, and then offer a national strategy for humanitarian immigration policy. Ultimately, this thesis will show that by reframing the way we view and implement humanitarian programs, we can fully utilize American values and principles to contribute to more effective and more sustainable homeland security.

#### **D. A STRATEGY FOR HUMANITARIAN IMMIGRATION POLICY**

It is not enough just to argue that using our humanitarian immigration programs more strategically would enhance homeland security. The argument must be followed with clear policy recommendations. The closing chapter of this thesis will define elements of a national strategy for humanitarian immigration policy. This will include some operational recommendations to resolve current inconsistencies and to help policy makers reframe some current-day problems. The strategy will move the United States closer to enhancing its use of humanitarian programs, while reducing the risks that these programs could potentially pose to our homeland security. The policy recommendations will support one strategic goal and be categorized under three operational objectives.

- Strategic Goal: The United States will contribute to the global good by targeting its humanitarian immigration programs toward promoting democratic stability, protecting the oppressed, and undermining the extremist ideologies behind terrorist activity.
- Objective 1: Establish a series of objective criteria for recipients of humanitarian immigration benefits.
- Objective 2: Establish strategic partnerships to enhance U.S. decision-making.

- Objective 3: Implement risk management principles by directing resources to where they are most effective.

The tasks that will fall under each of these goals will lay out clear actions that the United States government should undertake toward more effective use of humanitarian immigration policy. Their implementation would be a key element to the evolving homeland security strategy of the nation. These tasks alone will not be enough to fully redesign humanitarian immigration toward greater homeland security. However, they will encompass a critical first step toward a more modern set of policies.

A truly effective strategy against the harm caused by terrorism is not only possible. It is also probable given the strength and prosperity of the United States. In his recent book *Winning the Right War*, Philip Gordon writes:

It is difficult today to imagine a world without the Islamist terrorist threat – just as it was difficult for the last generations to imagine a world without the communist threat. But the extremist ideology responsible for the current threat is doomed to fail just like the extremist ideology that preceded it.<sup>3</sup>

This sentiment of optimism underscores the intent of this thesis. We already possess operational tools and resources, trusted democratic principles, and an American devotion to innovation and progress. We can and will employ these ideals toward a stronger, more secure nation, not only in the fight against the threat of terrorism, but also against some of those yet unnamed challenges that may face us in the future.

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<sup>3</sup> Philip H. Gordon, *Winning the Right War: The Path to Security for America and the World* (New York, NY: Henry Holt and Company, LLC, 2007), xvii.



## **II REVIEWING THE LITERATURE: NATIONAL AND HOMELAND SECURITY THEORIES**

### **A. INTRODUCTION**

The two primary arguments of this thesis are: 1) that we must reframe the way we are addressing the terrorist threat; and 2) that humanitarian immigration policy can be a key element to a new, more successful national homeland security strategy. To establish an improved framework for homeland security principles, it is first helpful to review what others have written and to analyze the most promising ideas. The heightened concern, in recent years, regarding the terrorist threat to the United States has spawned literature in multiple disciplines and from many conflicting and even overlapping perspectives. This chapter will examine a select group of major works and then analyze the policy implications of what they propose. This chapter will also introduce a few new concepts generated by interviews with practitioners in both immigration and homeland security.

The purpose of this literature review is not to debate multiple sides of the issues. Given the complexity of homeland security and those disciplines related to it, there is not enough space in one thesis to examine and contrast all sides of the argument. Instead, this literature review pulls common themes from authors who reside on multiple points on the philosophical spectrum. The intent, in choosing these likenesses, is to direct the thesis toward an eventual set of consistent, practical policy recommendations and operational options.

The literature chosen for review express concepts that can be categorized under the following themes:

- There is a rationale behind terrorist activity.
- The existence of an extremist threat requires us to examine how our values fit in the context of the global community.
- We can learn from the successes of our past.
- We need a strategy to win the war of ideas.
- A successful strategy requires investment in the global good.

## **B. THERE IS A RATIONALE BEHIND TERRORIST ACTIVITY**

Terrorism is a tool that is deliberately chosen by individuals or groups because they believe that it will further their cause. To understand the reasons for it, it is useful to examine some fundamental principles of human and organizational behavior. A basic question regarding terrorism as a behavior is whether or not terrorists should be considered normal in terms of their psychological disposition. Should we assume that terrorists, especially suicide terrorists, must be insane and irrational to engage in such harmful activity? One could argue that killing oneself, perhaps in a suicide bombing, is not logical and could only be expected of someone with a mental illness. Likewise, knowingly committing a violent act that would harm innocent children could also be considered to only be acceptable in the mind of a madman. A deeper investigation into the decision-making behind terrorist activity, however, suggests that there is perceived meaning behind the violence. In fact, “almost without exception, psychological research indicates that terrorists are normal people.”<sup>4</sup>

For example, in a chapter entitled “Psychological Issues in Understanding Terrorism and the Response to Terrorism” psychologist Clark McCauley writes that terrorists do not suffer from psychopathology.<sup>5</sup> He states that normal people can engage in terrorist behavior. This can be a reaction provoked by anger, frustration, or insult at both the individual and group levels.<sup>6</sup> McCauley argues that the choice to engage in terrorist activity is actually based in reason derived from support for a specific cause. He writes:

The trajectory by which normal people become capable of doing terrible things is usually gradual, perhaps imperceptible to the individual... In too-simple terms, terrorists kill for the same reasons that groups have killed for centuries. They kill for cause and comrades, that is, with a combination of ideology and intense small-group dynamics. The cause

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<sup>4</sup> David Tucker, “The Unconventional Threat to Homeland Security,” (Monterey, CA: Center for Homeland Defense and Security, nd), 9.

<sup>5</sup> Clark McCauley, “Psychological Issues in Understanding Terrorism and the Response to Terrorism,” in *Psychology of Terrorism*, ed. Bruce Bongar, Lisa M. Brown, Larry E. Beutler, James N. Breckenridge, and Philip Zimbardo (New York, NY: Oxford University Press, 2007), 14-15.

<sup>6</sup> *Ibid.*, 16-17.

that is worth killing for and dying for is not abstract but personal – a view of the world that makes sense of life and death and links the individual to some form of immortality.<sup>7</sup>

Taking this concept several steps further is the book *From the Terrorists' Point of View: What They Experience and Why They Come to Destroy* by Fathali Moghaddam in which he explores the logical process that an individual undertakes as he or she progresses from experiencing feelings of frustration to actually engaging in terrorist activity. Obviously, many people throughout the world are frustrated with challenges and injustices they face in their lives, but only a small few choose terrorist activity as a method to alleviate that frustration. Some people do turn to acts of terrorism, and Moghaddam posits some of the reasons for that and then describes the policy implications of his theory. He uses the image of a “narrowing staircase leading to the terrorist act at the top of a multistory building.”<sup>8</sup> Every person begins his or her life on the ground floor. Here we may experience dissatisfaction with our life and opportunities. If we decide to find a way to resolve the injustices we perceive, we climb to the first floor where we seek solutions.<sup>9</sup> If we still cannot find satisfaction, some of us proceed to the second floor where we look to fix blame to an external player. On the third floor, we may begin to see violence as a viable option and we start to identify with groups with those same beliefs. On the fourth floor, an even smaller group of us disengages from the rest of society, pledging to the morality of the terrorist group, and on the fifth floor, and even more measured group chooses to carry out a terrorist activity. Moghaddam suggests that “in all cultures, terrorism can only be defeated in the long term if conditions on the ground floor are reformed.”<sup>10</sup> He also says that “when a terrorist reaches the fourth or higher floors, there is little possibility of his or her climbing back down the staircase.”<sup>11</sup> This theory of the terrorist staircase carries significant policy implications. It suggests

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<sup>7</sup> Clark McCauley, 19.

<sup>8</sup> Fathali M. Moghaddam, *From the Terrorists' Point of View: What The Experience and Why They Come to Destroy* (Westport, CT: Praeger Security International, 2006), 43.

<sup>9</sup> Ibid., 59.

<sup>10</sup> Ibid., 44.

<sup>11</sup> Ibid., 44.

that relieving dissatisfaction and frustration is key to preventing terrorist behavior because, once an individual chooses to engage in terrorist activity, it is very difficult to change the course of their thought. Instead, the theory implies that an effective use of counter-terrorism resources would be to inject them as early as possible in the potential terrorist's decision-making process. Relieving insult and frustration early, or preventing it altogether, is a much more effective way of eradicating terrorism than trying to stop a terrorist from carrying out his or her attack.

A third but consistent view on the motivation behind terrorist activity is presented by Bruce Hoffman in his book *Defining Terrorism*. He writes:

...unlike the ordinary criminal or the lunatic assassin, the terrorist is not pursuing purely egocentric goals; he is not driven by the wish to line his own pocket or satisfy some personal need or grievance. The terrorist is fundamentally an *altruist*: he believes that he is serving a “good” cause designed to achieve a greater good for a wider constituency – whether real or imagined – that the terrorist and his organization purport to represent.<sup>12</sup>

Like McCauley and Moghaddam, Hoffman presents the terrorist as making rational decisions in service to what he or she believes to be a greater cause.

### **C. THE EXISTENCE OF AN EXTREMIST THREAT MAKES US CONSIDER HOW OUR VALUES FIT IN THE CONTEXT OF THE GLOBAL COMMUNITY**

Some would argue that before defining the elements necessary to our national and homeland security, we must first define what we are as America in the twenty-first century. Back in 1835 with the publication of his now classic work *Democracy in America*, Alexis de Tocqueville opined that in American society the “equality of condition is the fundamental fact from which all others seem to be derived.”<sup>13</sup> He expands upon this American notion of equality throughout his book and defines it as critical to both the feelings of America and our greater political society. Almost two

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<sup>12</sup> Bruce Hoffman, *Inside Terrorism* (New York, NY: Columbia University Press, 2006), 37.

<sup>13</sup> Alexis de Tocqueville, edited and abridged by Richard Heffner, *Democracy in America* (New York: Penguin Group, 1956), 26.

hundred years after de Tocqueville's observation, can we still view the American identity in such a simple manner, or should we take a more complex approach and evolving perspective?

In September 2007, the new U.S. Secretary of Defense, Robert M. Gates, addressed the "World Forum on the Future of Democracy" in Williamsburg, VA. His remarks raise questions regarding how America should view itself in the 21<sup>st</sup> century among the threats and challenges that we currently face. He stated:

Still, we Americans continue to wrestle with the appropriate role this country should play in advancing freedom and democracy in the world. It was a source of friction through the entire Cold War. In truth, it has been a persistent question for this country throughout our history. How should we incorporate America's democratic ideals and aspirations into our relations with the rest of the world? And in particular, when to, and whether to try to change the way other nations govern themselves? Should America's mission be to make the world 'safe for democracy,' as Woodrow Wilson said, or, in the worlds of John Quincy Adams, should America be 'the well-wisher of freedom and independence of all' but the champion and vindicator only of our own'?<sup>14</sup>

Alexis de Tocqueville characterized the American identity very simply. Robert Gates adds to that description the concept that our values have implications for other countries as well, and that our international role is complex. He raises questions as to what that role should be, especially in light of the threats we currently face. A bit later in his speech, Secretary Gates suggested some answers to the questions he initially posed. He said:

An underlying theme of American history is that we are compelled to defend our security and our interests in ways that, in the long run, lead to the spread of democratic values and institutions...And, as with the Cold War, every action we take sends a signal about the depth of our strength and resolve. For our friends and allies, as well as for our enemies and potential adversaries, our commitment to democratic values must be matched by actions.<sup>15</sup>

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<sup>14</sup> Robert M. Gates, "Speech before the World Forum on the Future of Democracy" (Williamsburg, VA, September 17, 2007).

<sup>15</sup> Ibid.

In other words, by behaving as a strong democracy and embodying democratic values, we demonstrate that our chosen form of government would be attractive to other societies. We must continue to act in accordance with our own values if we want to have a useful role in the global community.

Beyond the words of Alexis de Tocqueville and Robert Gates, an additional concept to consider is that how we fight extremist ideology is as much about ourselves as it is about the terrorists. In his book *Unconquerable Nation*, Brian Michael Jenkins encourages us to look beyond outside threats and to look inward to strengthen ourselves. He focuses on fighting the *terror*, not just the terrorists.<sup>16</sup> This implies that we control our reaction to terrorism and that our reaction is what makes the terrorists successful or not. Part of our reaction must be to find ways to protect the values and liberties that make America what it is.

#### **D. WE CAN LEARN FROM THE SUCCESSES OF OUR PAST**

In trying to define our present and future principles of homeland security, and subsequently our immigration policy, we should also take some lessons from our failures and successes of the Cold War era. In his book, *Diplomacy*, Henry Kissinger lays out the evolution of the containment strategy that dominated U.S. foreign policy at the time. The U.S. aim was to resist further Soviet expansion, and the assumption was that “the goals and philosophies of the United States and the Soviet Union were irreconcilable.”<sup>17</sup> Kissinger quotes President Harry Truman as characterizing the ideological stalemate thus:

One way of life is based upon the will of the majority and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression. The second way of life is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections and the suppression of personal freedoms.<sup>18</sup>

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<sup>16</sup> Brian Michael Jenkins, *Unconquerable Nation: Knowing Our Enemy Strengthening Ourselves* (Santa Monica, CA: RAND Corporation, 2006), 157.

<sup>17</sup> Henry Kissinger, *Diplomacy* (New York: Simon & Schuster, 1994), 449.

<sup>18</sup> *Ibid.*, 452.

One could argue that a similar version of this quote could be applied to today's global war on terror. Consequently, we must also examine whether there are lessons that we can take from the Cold War period as we redefine our immigration policy. The philosophical essence of containment strategy was to keep the Soviet Union from gaining an ideological foothold. The immigration element of that strategy was to provide refugee status to defectors and others fleeing persecution from communist regimes. As history has illustrated, the end of the Cold War put the U.S. on top as the only remaining superpower. Our successes in the fight against communism should not be overlooked. Instead, we should mine the policies of that era, searching for wisdom that can be applied today.

#### **E. WE NEED A STRATEGY TO WIN THE WAR OF IDEAS**

If we acknowledge that terrorists use reason to choose their actions, and we recognize that our containment strategy helped to defeat the proliferation of the communist ideology during the Cold War, our next logical step is to conclude that we need a strategy to defeat the extreme ideology of the terrorists. In their book entitled *Winning the Long War*, James Jay Carafano and Paul Rosenzweig highlight the need for a sound, carefully considered strategy against the terrorist threat.

They begin their argument by stating that “there is more to homeland security than throwing money at the problem. Defending the homeland is a strategic problem – and at the strategic level, thought should always precede action.”<sup>19</sup> They also emphasize that such a strategy must be complex and multilayered to bring long-term and sustainable success. They advocate “a government that not only stops terrorists, but also serves our citizens and our friends.”<sup>20</sup> This requires a set of tasks which they describe in the following way:

Winning the long war is all about winning the struggle of ideas, destroying the legitimacy of a competing ideology, and robbing the enemy of the support of the people. Such an effort implies some essential tasks: 1)

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<sup>19</sup> James Jay Carafano and Paul Rosenzweig, *Winning the Long War: Lessons from the Cold War for Defeating Terrorism and Preserving Freedom* (Washington, DC: The Heritage Foundation, 2005), 55.

<sup>20</sup> *Ibid.*, 68.

understanding the enemy; 2) de-legitimizing its view of the world; 3) offering a credible alternative; 4) demonstrating the will to prevail in the long conflict.<sup>21</sup>

Two years after Carafano and Rosenzweig's book, Philip Gordon's *Winning the Right War* reconfirms similar assertions. He argues that "another lesson from the Cold War is that preserving the virtue of our own society is a crucial tool in outlasting and defeating an enemy ideology."<sup>22</sup> He also clarifies the importance of the United States promoting a positive reputation throughout the international community. He states that:

It is not a question of simply being liked by others, or even doing the right thing, but of preserving national self-interest by not providing fodder for those who are prepared to resort to violence because of America's 'image'.<sup>23</sup>

Consequently, in our strategy, we must take care not only to state clearly the American ideology, but also to mitigate the perception that violent action against us is in any way justified by our own misguided behavior. Through Carafano's, Rosenzweig's, and Gordon's emphasis on a careful strategy, we are challenged to use the homeland security tools we have, and the ones that we can create, in a manner that will best serve our long-term security goals.

#### **F. A SUCCESSFUL STRATEGY REQUIRES INVESTMENT IN THE GLOBAL GOOD**

Improving the perception of U.S. behavior and intentions requires a complex, thoughtful effort across multiple layers of government and private society. Stephen M. R. Covey's view of individual and organization success in his book, *The Speed of Trust*, offers some insight into how to form our strategy.

Covey posits that "we judge ourselves by our intentions and others by their behavior."<sup>24</sup> Therefore, as a country, we may believe that our efforts are honest and

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<sup>21</sup> James Jay Carafano and Paul Rosenzweig, 174.

<sup>22</sup> Philip H. Gordon, 48-49.

<sup>23</sup> Ibid., 70.

<sup>24</sup> Stephen M. R. Covey, *The Speed of Trust: The One Thing that Changes Everything* (New York: Free Press, 2006), 13.



righteous, but the external perception of them may be different. Our good intentions mean little if they do not accompany a consistent message. It is our responsibility to make the message clear. Covey goes on to emphasize the importance of building trust as a way to improve any relationship – at the individual level, in the international arena or otherwise. He says that

When trust is high, the dividend you receive is like a performance multiplier, elevating and improving every dimension of your organization and your life. High trust is like the leaven in bread, which lifts everything around it.<sup>25</sup>

He explains how trust can best be used in building a constructive society:

The overriding principle of societal trust is *contribution*. It's the intent to create value instead of destroy it, to give back instead of take. And more and more, people are realizing how important contribution and the cause it inspires – are to a healthy society.<sup>26</sup>

If we accept Covey's assertion that contribution is critical to fostering trust in society, and we agree that it is key to our security to improve the perception of the United States among the rest of the world, then we must determine how to weave these principles into our strategy. In his book, *The Paradox of American Power*, Joseph Nye offers some recommendations. He introduces the concept of soft power as a method by which the United States can demonstrate its strengths through non-aggressive means. He defines soft power in the following way:

Soft power rests on the ability to set the political agenda in a way that shapes the preferences of others...The ability to establish preferences tends to be associated with intangible power resources such as an attractive culture, ideology, and institutions. If I can get you to *want* to do what I want, then I do not have to force you to do what you do *not* want to do. If the United States represents values that others want to follow, it will cost us less to lead. Soft power is not merely the same as influence, though it is one source of influence. After all, I can also influence you by threats or rewards. Soft

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<sup>25</sup> Stephen M. R. Covey, 19.

<sup>26</sup> Ibid., 275.

power is also more than persuasion or the ability to move people by argument. It is the ability to entice and attract. And attraction often leads to acquiescence or imitation.<sup>27</sup>

According to Nye, the United States should pay closer attention to maintaining and even increasing its soft power. He stresses that isolationism will only harm us and that humanitarian interests are important to our foreign policy. Years after publishing *The Paradox of American Power*, Nye joined with Richard Armitage, under the auspices of the Center for Strategic and International Studies, to coordinate a commission on “smart power.” The resulting report, compiled from contributions from public and private sector policy leaders once again reiterates the importance of the perception of the United States in the international community:

America’s image and influence are in decline around the world. To maintain a leading role in global affairs, the United States must move from eliciting fear and anger to inspiring optimism and hope.<sup>28</sup>

The report also states that:

What is required, though, is not only leadership that will keep Americans safe from another attack, but leadership that can communicate to Americans and the world that the safety and prosperity of others matters to the United States.<sup>29</sup>

Nye and Armitage conclude that “investing in the global good is not charity. It is sound foreign policy.”<sup>30</sup> They explain that “providing for the global good is central to this effort because it helps America reconcile its overwhelming power with the rest of the world’s interests and values.”<sup>31</sup> It is this emphasis on reconciling our country’s power with the interests of others that will guide the rest of this thesis. Nye and Armitage do

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<sup>27</sup> Joseph S Nye, Jr., *The Paradox of American Power* (New York: Oxford University Press, 2002), 9.

<sup>28</sup> Richard L. Armitage and Joseph S. Nye Jr., *CSIS Commission on Smart Power: A Smarter, More Secure America* (Washington, DC: The Center for Strategic and International Studies, 2007), 1.

<sup>29</sup> Ibid., 4.

<sup>30</sup> Ibid., 5.

<sup>31</sup> Ibid., 7.

not specifically discuss humanitarian immigration policy as an element of the greater strategy, but the following chapters of this thesis will demonstrate that such a policy should be considered an integral tool.

## **G. FROM THE LITERATURE TO THE PRACTITIONERS**

To add a more operational perspective to the literature available on these issues, the research for this thesis included both structured interviews and informal discussions with current and former practitioners of immigration and homeland security policy in the United States government. The purpose of these conversations was to generate ideas about the subject matter of this thesis and to gauge whether there were any conceptual gaps in what was learned from the literature. Each discussion began with an agreement that the ideas collected would not be individually attributed. The discussions, conducted over the course of several months, yielded many ideas regarding the direction of this thesis. Reviewing the literature suggested that humanitarianism is critical to enhancing homeland security. Interviewing practitioners brought forward the concept of risk in humanitarian immigration as well as some options toward how to frame that risk conceptually. Five of the most critical points collected are as follows:

- Providing protection in the form of immigration benefits has become controversial although it did not used to be. Humanitarian immigration policy and national security should not be seen as competing interests.
- Good humanitarian immigration policy requires making risk-related decisions both at the policy level and in screening individual applicants. This is a new way of making policy, and we are not yet fully accustomed to it.
- There is a difference between committing fraud to get an undeserved immigration benefit and committing fraud to engage in terrorism. This should be figured into any risk calculation we make.

- We must accept that there will always be risks when evaluating applicants from any population. We should work to enhance our vetting techniques and intelligence capabilities to reduce the risk as much as possible, but no population will ever be entirely risk free.
- Constraining immigration benefits for countries where there may be a terrorist threat actually makes the situation worse. By focusing negative policies on those countries, we actually appear to prove the terrorists' own point, thereby increasing the threat against the United States.

Each of the concepts above arose through discussions with immigration and homeland security practitioners. While it is important to recognize that none of the concepts expressed above is based on rigorous analysis of hard data, there is still value in the opinions expressed. Each of the interview participants has made a career in either immigration and/or public policy. The wisdom of many years of practical experience serves as an important complement to the academic literature and historical data. With these concepts in hand, it is now possible to thoughtfully review the immigration policy in the United States through the lens of reforming it to meet our greater security needs.

### III. THE CURRENT IMMIGRATION LANDSCAPE

The previous chapter reviewed several pieces of literature on the foundation of the terrorist threat and possible concepts to consider as we reframe our strategy against violent extremism. The literature that was highlighted looked at homeland security through a fairly wide lens. This chapter seeks to narrow the focus to U.S. immigration policy. Immigration policy is often mentioned as one element of the greater homeland security mission. If we perceive that much of the threat comes from outside our borders, immigration is the means by which the threat can arrive directly on our shores. For reasons even beyond counter-terrorism, the immigration debate is a complex one. This chapter will hone that debate down to one that is specific to homeland security threats. It will also set up the context for the following chapter which will look specifically at the humanitarian aspect of immigration.

Traditionally, U.S. immigration policy has had three primary goals. “First, it serves to reunite families by admitting immigrants, who already have family members living in the United States. Second, it seeks to admit workers with specific skills and to fill positions in occupations deemed to be experiencing labor shortages. Third, it attempts to provide refuge for people who face the risk of political, racial, or religious persecution in their country of origin.”<sup>32</sup> It is important to note that none of these goals specifically mentions national security. Instead, immigration policy has focused on cultural, economic, and moral priorities. That is not to say that there is no tie to homeland security. In fact, there is a strong link. Immigrants can pose a threat to our security if they use our immigration system as a tool to enter our country and do us harm. On the other side of the coin, immigration has been a key factor in the economic and cultural success of our country, both elements worth protecting as our homeland security strategy evolves.

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<sup>32</sup> Congressional Budget Office, *Immigration Policy in the United States* (Washington, DC: Congress of the United States, February 2006), vii.

#### **A. IMMIGRATION REFORM EFFORTS BEFORE SEPTEMBER 11, 2001**

Well prior to the events of September 11, 2001, the United States had recognized that its immigration system was in disrepair and was not fully meeting the need of the country. In 1990, Congress passed an immigration reform bill. One of the bill's provisions involved the creation of a bipartisan commission to study immigration issues and then make recommendations for reform. This commission began its work in 1990 and then published a series of recommendations before it disbanded in 1997. Among the recommendations was the importance of restructuring the immigration system at the federal level. At the time, all immigration functions were under the purview of the Immigration and Naturalization Service, a component of the U.S Department of Justice. The Commission on Immigration Reform recommended that the immigration benefits functions should be pulled out and placed under the Department of State while the enforcement functions would state under the Department of Justice. This restructuring recommendation as well as many others were under review during the fall of 2001. Additionally, the terrorist attack against the World Trade Center in 1993 and the apprehension of would be terrorist Ahmed Ressam at the U.S.-Canadian border in 1999, demonstrated that vulnerabilities in our immigration system could be exploited for terrorist activity.

#### **B. IMMIGRATION REFORM AFTER SEPTEMBER 11, 2001**

After the terrorist attacks on September 11, 2001, the United States government began in earnest to determine from where the threat may have come and what methods should be implemented to prevent such as attack from occurring again in the future. As all of the hijackers were citizens of countries other than the United States, it was natural to look to the U.S. immigration system to see whether the terrorists may have taken advantage of our own weaknesses. The U.S. government immediately began to enact several policy changes both through legislation and through a variety of national strategies and reports. The most critical of these are as follows:

- The *USA PATRIOT Act* was passed on October 25, 2001, less than two months after the 9/11 attacks. The Act influenced the immigration system in several ways especially as it “broaden[ed] the grounds for excluding terrorists and aliens with ties to terrorist organizations”.<sup>33</sup> The provisions of excluding aliens who have provided material support to a terrorist organization later created controversy when applied in the context of humanitarian immigration programs.
- The *National Strategy for Homeland Security* was released by the White House in July 2002. It was the first national level document to define the homeland security mission and to outline those disciplines involved in the greater strategy. It lists border and transportation security as one of the six critical mission areas and begins to outline a plan for reducing the vulnerabilities of what and who enters the country while maintaining the movement of legitimate trade and immigration.<sup>34</sup>
- On November 25, 2002, President George W. Bush signed the *Homeland Security Act of 2002*.<sup>35</sup> The Act abolished the Immigration and Naturalization Service and placed its previous functions under the newly established Department of Homeland Security. The immigration services functions and the immigration enforcement functions would be maintained in separate bureaus.

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<sup>33</sup> Rosemary Jenks, *The USA PATRIOT Act of 2001: A Summary of the Anti-Terrorism Law's Immigration-Related Provisions* (Washington, DC: Center for Immigration Studies, December 2001), 2.

<sup>34</sup> *National Strategy for Homeland Security* (Washington, DC: Office of Homeland Security, July 2002), 22.

<sup>35</sup> Sharon S. Gressle, *Homeland Security Act of 2002: Legislative History and Pagination Key* (Washington, DC: Congressional Research Service, November 26, 2002), summary.

- The *REAL ID Act of 2005* introduced stricter eligibility criteria for asylum and expanded “the scope of terror-related activity making an alien inadmissible [to the United States] or deportable”.<sup>36</sup>
- The *Final Report of the National Commission on Terrorist Attacks Upon the United States*, commonly known as the *9/11 Commission Report*, was published by a bipartisan commission in 2004 after a lengthy investigation. The report points out that terrorists analyze our defenses and plan accordingly. It states that prior to 9/11, although the U.S. immigration system was seen as dysfunctional, it was not widely considered a threat to national security.<sup>37</sup> Nonetheless, “al Qaeda had been systematically but detectably exploiting weaknesses in our border security since the early 1990’s”.<sup>38</sup> The report identifies that a tighter immigration system could have kept some of the hijackers from carrying out their plot. It states:

We also found that had the immigration system set a higher bar for determining whether individuals are who or what they claim to be – and ensuring routine consequences for violators – it could possibly excluded, removed, or come into further contact with several hijackers who did not appear to meet the terms for admitting short-term visitors.<sup>39</sup>

- The *National Strategy to Combat Terrorist Travel* of 2006 stresses that as we implement new security measures, our terrorist enemies adapt their methods to exploit different vulnerabilities. The Strategy advocates

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<sup>36</sup> Michael John Garcia, Margaret Mikyung Lee, and Todd Tatelman, *Immigration: Analysis of the Major Provisions of the REAL ID Act of 2005* (Washington, DC: Congressional Research Service, May 25, 2005), summary.

<sup>37</sup> *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton & Co., 2004), 383-384.

<sup>38</sup> *Ibid.*, 384.

<sup>39</sup> *Ibid.*, 384.



several initiatives to both “constrain terrorist mobility overseas” and “deny terrorists the ability to enter, exit, and travel within the United States”.<sup>40</sup>

- The *National Strategy for Homeland Security of 2007* is the most recent national level document to define a path forward for the homeland security mission. Published in October 2007, it lays the groundwork for a more ‘all-hazards’ approach to protecting the homeland. It highlights several initiatives for screening people including provisions related to the REAL ID Act, the Student and Exchange Visitor System (SEVIS), the United States Visitor and Immigrant Status Indicator Technology (US-VISIT), the Western Hemisphere Travel Initiative and the Visa Waiver Program.<sup>41</sup>

Each of these efforts attempted to shore up vulnerabilities in the U.S. immigration system. Some had unintended consequences and others have results that are yet to be seen. Nonetheless, each pointed to a nexus between immigration policy and homeland security. The challenge lies in defining exactly what that nexus is, and perhaps more importantly, what it is not.

### **C. THE DEBATE OVER THE LINKS BETWEEN IMMIGRATION POLICY AND NATIONAL SECURITY**

The immigration debate is often a heated one and has never, in recent years, resulted in a national consensus. This is even more so the case when immigration policy is viewed through a national security lens. It would not do the argument justice to state that there are even two sides. In fact, there are multiple perspectives each recommending a range of policy options. For the purpose of this thesis, it is not necessary to outline all of the varying viewpoints, but it is helpful to describe a few.

In September 2005, the Federation for American Immigration Reform (FAIR) issued a report entitled *Code Orange: Diminishing the Terrorist Threat to America*. In

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<sup>40</sup> *National Strategy to Combat Terrorist Travel* (Washington, DC: National Counterterrorism Center, May 2, 2006), 1-3.

<sup>41</sup> *National Strategy for Homeland Security of 2007* (Washington, DC: Homeland Security Council, October 2007), 17.

the report, FAIR advocates much stricter immigration enforcement policies and argues that, even as early as the 1993 attack against the World Trade Center, the United States knew that its immigration system was vulnerable to terrorism but did not take adequate steps to shore up weaknesses.<sup>42</sup> The report states that even since September 11, there has not been enough attention paid to the vulnerabilities presented by the porous nature of our borders. It argues:

That threat lies in the thousands of foreigners daily streaming illegally into our country to melt into the shadows of immigrant communities, especially in our major cities, which have a rapidly growing share of persons living and working in our country outside the law.<sup>43</sup>

Other writers take a different perspective on how we should use immigration policy toward greater homeland security. Bill Ong Hing of the University of California, Davis argues that many of the stricter immigration provisions implemented after 9/11 “have [not] actually helped achieve the goal of apprehending terrorists”.<sup>44</sup> He states that although the U.S. government did engage in initiatives to more stringently screen certain selected groups of immigrants, the result was that no terrorists were caught. He also argues that the policies further alienated Arab and Muslim immigrants, actually making the situation worse.<sup>45</sup>

Another perspective of the debate centers on the concept of terrorist mobility. If terrorists are able to move freely, they are more able to plan for and engage in violent acts. If we restrict their mobility, they cannot carry out physical attacks against us. In her report entitled *Countering Terrorist Mobility: Shaping an Operational Strategy*, Susan Ginsburg, a member of the 9/11 Commission, describes the concept of terrorist mobility and explains its differences from and linkages to the concept of migration.

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<sup>42</sup> John L. Martin, *Code Orange: Diminishing the Terrorist Threat to America* (Washington, DC: Federation for American Immigration Reform, September 2001), 2.

<sup>43</sup> *Ibid.*, 5.

<sup>44</sup> Bill Ong Hing, “Misusing Immigration Policies in the Name of Homeland Security,” *The New Centennial Review*, Volume 6, Number 1 (Spring 2006): 202.

<sup>45</sup> *Ibid.*, 203-204.

Many post-9/11 news accounts and reports highlight the terrorists' exploitation of the U.S. immigration system to enter the country and do us harm. Ginsburg's report takes that concept a step further by distinguishing the difference between migration of the masses for economic purposes and mobility of small groups of terrorists for purposes of violent disruption and fear. She stresses the importance of developing policies that enhance national security while still respecting the necessity for economic prosperity, human rights, humanitarian compassion, and constitutional order. She also stresses that while migration issues can easily be divided into legal and illegal immigration challenges, terrorist mobility can be enhanced through both legal and illegal immigration channels. Therefore, countering terrorist mobility is not as simple as just attacking the illegal immigration problem. She also states that it is critical for the U.S. to promote positive attitudes of itself and that one way to accomplish this is through open and friendly visa and citizenship policies as well as "promot(ing) immigrants' ability to adapt and thrive" within the United States.<sup>46</sup> She argues that:

The more stable and lasting an immigration equilibrium Congress can craft, and the more positive its impact on the rest of the world and their perception of us, the greater will be the U.S. ability to persuade other countries to help suppress and control the global criminal infrastructure for migration.<sup>47</sup>

Ginsburg's arguments assert that there is a necessity for the United States to strengthen its immigration system without being so strict that it sullies its reputation throughout the rest of the world. The challenge is to find that right mix of policies to achieve both ends.

#### **D. LOOKING AT IMMIGRATION POLICY AND COUNTER-TERRORISM THROUGH ANOTHER LENS**

It is helpful to try to break the problem of terrorism into more manageable pieces. Our immigration system is often the culprit as we try to pin the blame on the cause of the

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<sup>46</sup> Susan Ginsburg, *Countering Terrorist Mobility: Shaping an Operational Strategy* (Washington, DC: Migration Policy Institute, February 2006), 13.

<sup>47</sup> *Ibid.*, 13.

terrorist attacks of September 2001. Certainly, the immigration system is flawed, but there is a danger in focusing on immigration as the root of the entire problem. First, as we know from the attack on Oklahoma City in 1995, not all terrorists are immigrants. Second, increased scrutiny of the immigrant population as a whole could lead to heightened feelings of alienation and bitterness toward the United States which could lead to more terrorism. Third, the strength of our economy is clearly dependent upon the global movement of people, goods, and ideas. Excessive restrictions on immigration could actually do us more harm than good. So what do we do?

As with any other large scale problem, terrorism has many causes. For us to eradicate, or even significantly reduce, avenues for terrorism, we must identify as many of its causes as possible. One way to do this is to categorize the players. The diagram below is an attempt to do just that. Its purpose is to break down the various classes of individual who might engage in terrorist activity. Through this type of examination, we can see that certainly there is value in fixing our broken immigration system. However, we can also see that even a perfect immigration system would still be unable to address significant elements of what causes terrorism. From this type of disaggregate structure, we also learn that each class of terrorists could potentially be influenced by a different level of government or a different professional discipline. For example, those outside the United States may be best affected by action on the part of the Department of State. Those inside the United States may be most easily identified and quelled by a state or local law enforcement agency. In any case, it is extraordinarily clear that one agency or organization cannot achieve success alone.

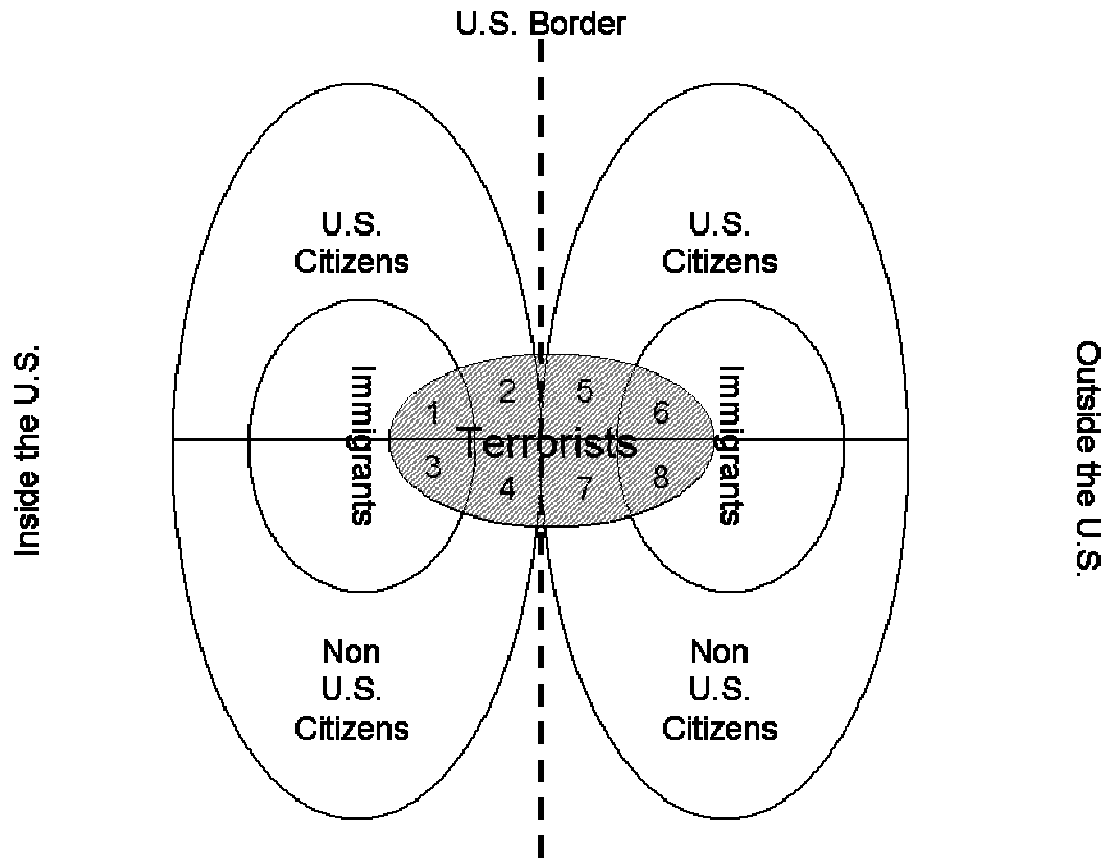


Figure 1. Terrorism and Immigration

The diagram above is a graphical depiction of the different demographic classes of terrorists. Terrorists are, for the purpose of this thesis, defined as someone with the intent to do harm and undermine the security of the United States for ideological or political reasons. Our goal, as homeland security professionals, is to prevent them from causing that harm. There are eight possible classes of terrorist and those classes are defined as follows:

Within the United States:

- Group 1 is comprised of immigrant U.S. citizens. They were not born in the United States but immigrated here and chose to become naturalized.
- Group 2 is made up of U.S. citizens who were born here and continue to reside here.

- Group 3 includes immigrants who have moved here but have not chosen to naturalize.
- Group 4 includes visitors to the United States who have not chosen to live here permanently. Examples would be a business traveler, a tourist, or a foreign student.

#### Outside the United States.

- Group 5 consists of people born in the United States who have chosen to live abroad.
- Group 6 is comprised of individuals who have immigrated to the United States, naturalized and then moved abroad.
- Group 7 is made up of people who are not United States citizens and may wish to visit here but do not intend to take up permanent residence.
- Group 8 includes non-U.S. citizens who wish to immigrate here and remain permanently.

Each of these eight groups has a different personal history, and if inclined toward terrorist activity, would have different opportunities to carry out harmful acts. A quick look at the diagram could lead to the conclusion that anyone, in any class, could be a terrorist and that we are facing an impossible challenge. It is true that anyone could potentially become a terrorist. As was discussed in the previous chapter, terrorism is the result of rational decision-making in reaction to a perceived insult or an overwhelming frustration. However, the purpose of the diagram above is to categorize ‘anyone’ into smaller groups with more common interests. By breaking the problem into smaller pieces, it is easier to identify tools that could incrementally buy down the overall risk. For the United States to be successful in preventing terrorism, we must employ tools that would have an effect on each of these groups. What might work to keep a terrorist in

Group 7, for example a Mohammed Atta, from entering the United States and carrying out a terrorist act would have no effect on someone in Group 2, such as a Timothy McVeigh, from causing harm.

To reduce the risks that we face, we must take a layered approach to homeland security. Enhancing the integrity of our immigration system would provide one of those layers. It would help to address the risk we face as a result of individuals who want to enter the United States and do us harm. The following chapter will show how a subset of the immigration system, those programs devoted toward humanitarian relief, can have a positive effect on the integrity of lawful admissions to the United States as well as address some of the conditions causing fear, frustration, and instability in other parts of the world where terrorism could flourish.

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#### **IV. HUMANITARIAN IMMIGRATION POLICY: ITS PURPOSE, EVOLUTION, AND CHALLENGES**

The previous chapter described some of the complexities of the U.S. immigration system and how they relate to homeland security. Reforming the immigration system is an extremely controversial endeavor. The purpose of this thesis is not to examine immigration as a whole but instead to examine one element of U.S. immigration policy to identify its linkages to the greater homeland security mission and then to recommend a series of policy changes or enhancements. This thesis will focus on those immigration programs created to provide humanitarian relief. The eventual product will be a humanitarian immigration strategy to be outlined in the final chapter.

The primary basis for U.S. immigration policy is the Immigration and Nationality Act (INA), enacted in 1952. This legislation outlined modern immigration law and set up the bureaucratic infrastructure to carry out the policy. Major amendments to this policy took place much later in other pieces of legislation including: the Refugee Act of 1980; the Immigration Act of 1990; and the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996. Additionally, the United States is a party to the 1967 United Nations Protocol Relating to the Status of Refugees, thereby joining the international community in the provision of protection to those who have experienced fear or persecution.

To devise a strategy for it, humanitarian immigration policy must first be defined as separate from other forms of immigration policy. As described in the previous chapter, U.S. immigration policy has three primary aims: to reunite families; to bring needed labor into our economy; and to provide humanitarian relief. This thesis will not engage in discussion of illegal immigration as it affects the United States. Instead it will focus on the legal means of admitting and providing immigration benefits to victims of persecution, oppression, or extraordinarily devastating natural disasters. While it touches upon several agencies throughout the U.S. government, humanitarian immigration policy is primarily the purview of United States Citizenship and Immigration Services (USCIS), a component agency of the Department of Homeland Security (DHS). This thesis will

focus on four specific immigration programs designed to be humanitarian in nature: the refugee admissions program; the asylum program; temporary protected status; and immigration benefits for victims of trafficking in persons.

This analysis will have more than just academic value. Currently, the United States is facing humanitarian immigration challenges in several countries. As discussed in Chapter I, two situations receiving much attention recently are the plight of Iraqi refugees who have fled from the war at home and the devastation suffered by refugees in Sudan, many of whom were forced from their home by armed conflict. In the case of both countries, there are clearly people in need of protection. However, in each country there are also supporters of terrorist organizations who, given the option, would be willing to make use of a humanitarian program to enter the United States and cause harm. Therefore, the decision-making around both of these cases is both complex and in urgent need of resolution. Because each of these situations is currently extremely dynamic, this thesis will not attempt to make direct policy recommendations for either Iraq or Sudan. It will however, attempt to identify both the importance of a humanitarian immigration strategy and a set of tactical tools and criteria that could help us to make swifter policy decisions in the event of future humanitarian crises.

#### **A. THE REFUGEE ADMISSIONS PROGRAM**

One of the most commonly known elements of U.S. humanitarian immigration policy is the admission of refugees for resettlement on American soil. Refugees began to receive attention on a global scale at the end of World War II when many people had been displaced and feared persecution if they returned home. The primary international document governing the protection of refugees is the *United Nations Convention Relating to the Status of Refugees* which was adopted on July 28, 1951.<sup>48</sup> The Convention entered into force in 1954. As stated in a recent UNHCR publication on the Convention:

Certain provisions of the Convention are considered so fundamental that no reservations may be made to them. These include the definition of the term “refugee,” and the so-called principle of *non-refoulement*, i.e. that no

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<sup>48</sup> *Convention and Protocol Relating to the Status of Refugees* (Geneva: United Nations High Commissioner for Refugees, August 2007), 5.

Contracting State shall expel or return (“*refouler*”) a refugee, against his or her will, in any manner whatsoever, to a territory where he or she fears persecution.<sup>49</sup>

A Protocol with additional provisions related to refugees was adopted and entered into force in 1967.<sup>50</sup> The United States is a signatory to the Convention and accepts the internationally recognized definition of the term “refugee”. While the United States did admit refugees to the country throughout the Cold War, it was not until the passage of the Refugee Act of 1980 that the refugee program as we know it today was codified into law. The goals of the Act were stated in Title 1:

SEC. 101. (a) The Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this country of refugees of special humanitarian concern to the United States, and transitional assistance to refugees in the United States. The Congress further declares that it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.

(b) The objectives of this Act are to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted.

There are a few items that are critical to note from the section of legislation cited above. First, the law refers to both resettlement and voluntary repatriation. Often refugee policy is assumed to mean resettlement of refugees within the United States. However, the most effective solution, both for humanitarian reasons and for reasons important to U.S. national security, may be for a given refugee population to voluntarily return home and contribute to the stability of the country from which they originally fled. This concept of voluntary repatriation is a critical one that must be considered when making policy decisions regarding refugee populations.

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<sup>49</sup> *Convention and Protocol Relating to the Status of Refugees*, 5.

<sup>50</sup> *Ibid.*, 6.

The second item to note from the legislation cited above is the provision of “transitional assistance”. This implies that the assistance is temporary, until the resettled refugees are able to survive without help from the government. This concept aligns well with the American work ethic and the importance of personal responsibility. Even today, this principle applies. Upon entry to the United States, refugees are only eligible for: Supplemental Security Income (SSI) for the Aged, Blind and Disabled for seven years; for Medicaid (non-emergency care) for seven years; for Temporary Assistance for Needy Families (TANF) for five years; and for food stamps for seven years.<sup>51</sup> This means that they eventually must take full responsibility for their own welfare and cannot become a perpetual burden on public funds.

Finally, the third item to note in the legislation cited above is the idea that the United States should encourage other nations to provide to refugees assistance and opportunities for resettlement. This statement underlines the importance of burden sharing as part of the greater humanitarian immigration strategy. This also implies a certain amount of cooperation and coordination with other nations. The United States cannot, and should not, handle the global refugee burden alone, and it must identify innovative methods for international cooperation. UNHCR has also stressed the need for countries to begin accepting refugee programs. For example, in 1999-2000, Brazil and Chile both began to implement agreements to resettle refugees. Previously, in the late 1990’s Ireland and Iceland also both agreed to accept refugees. In Africa, since 1998 Benin and Burkina Faso have also implemented resettlement programs.<sup>52</sup> A United States government report to Congress, released in 2007 lists the top five resettlement countries to be: the United States (with 48.77% of the total resettled); Canada (17.34%); Australia (15.89%); Sweden (5.30%); and Norway (2.95%).<sup>53</sup> Although the United States carries about half of the burden, the rest of refugee resettlement is spread across

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<sup>51</sup> Andorra Bruno, *Refugee Admissions and Resettlement Policy* (Washington, DC: Congressional Research Service, January 25, 2006), 10

<sup>52</sup> United Nations High Commissioner for Refugees, “New Resettlement Programmes,” <http://www.unhcr.org/protect/3bb2e1d04.html>, [Accessed November 15, 2007].

<sup>53</sup> *Proposed Refugee Admissions for Fiscal Year 2008, Report to Congress* (Washington, DC: United States Department of State, United States Department of Homeland Security, United States Department of Health and Human Services, no date), 57.

other countries and the trend appears to be that more countries are becoming willing and able to implement their own resettlement programs.

As amended by the Refugee Act of 1980, the Immigration and Nationality Act defines “refugee” in Sec. 101(a)(42) as:

(A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or

(B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term “refugee” does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or other resistance to coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

In addition to following this definition of refugee, the United State has also devised a priority based system for refugee resettlement. “*Priority 1* comprises cases involving persons facing compelling security concerns. *Priority 2* comprises cases involving persons from specific groups of special humanitarian concern to the United States (e.g., Iranian religious minorities). *Priority 3* comprises family reunification cases involving close relatives of persons admitted as refugees or granted asylum.”<sup>54</sup>

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<sup>54</sup> Andorra Bruno, summary.

Refugees are processed overseas for resettlement in the United States once they have been identified as being valid candidates. Most are referred to the U.S. government by the United High Commissioner for Refugees (UNHCR) and then are interviewed by members of the Refugee Corps of U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS). The U.S. Department of State oversees the transportation of approved refugees to the United States, and the Department of Health and Human Services coordinates resettlement resources and programs once the refugees are present on U.S. soil. The number of refugees allowed to be admitted for a given fiscal year is determined by a consultation between the President and the relevant U.S. government organizations. Each year the President issues a Determination in the form of a memorandum to the Secretary of State laying out the numbers for that Fiscal Year. The admissions number is allocated among regions with a specific number set aside to be discretionary. For Fiscal Year 2008, the total number of admissions shall be no higher than 80,000 with that total divided by: 16,000 from Africa; 20,000 from East Asia; 3,000 from Europe and Central Asia; 3,000 from Latin American and the Caribbean; 28,000 from the Near East and South Asia; and 10,000 as part of the unallocated reserve.<sup>55</sup>

In the last few years, and especially since 2001, the number of refugee admissions has fallen below the amount allowed by the Presidential Determination. In FY 2006, the Presidential Determination allowed for 70,000 admissions, but only 41,150 refugees were admitted to the United States. In FY 2005, 53,738 were admitted and in FY 2004, 52,837 were admitted. This is a significant increase from the years immediately following the attacks of September 11, 2001 when there were fewer than 30,000 refugees admitted in each of FY 2002 and FY 2003. The Office of Immigration Statistics of the Department of Homeland Security reports that the top five countries of origin for refugee admissions in FY 2006 were Somalia, Russia, Cuba, Vietnam, and Iran. Admissions from these five countries made up 61% of all admissions for that Fiscal Year. Somalia, alone, sent more than 10,000 admissions.

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<sup>55</sup> President George W. Bush to the Secretary of State, memorandum, "Presidential Determination No. 2008-1," October 2, 2007.

A critical point to remember when considering policies related to refugees is that refugees are processed *outside* the United States. They have been identified in other countries, having fled persecution, and are screened and vetted by the United States government before they are ever invited to travel to the U.S. This vetting process is critical to the overall security of the program. Any attempts to inject further security elements into the program would be best directed toward that initial vetting process. Because we are, in essence, inviting refugees to enter our country, we have much control over who we choose. If we find that a candidate has engaged in persecution of others or has ties to a terrorist or criminal organization, we may choose not to admit them to our country. This differs quite significantly from the asylum process which will be discussed later in this chapter.

Directing more attention to the security of the refugee program has been a top priority since the terrorist attacks of 2001. Some have argued that in our attempt to increase our security, we have actually undermined our own values and our tradition of providing humanitarian assistance to those who fear or have experienced persecution. A report by the Human Rights Institute at the Georgetown University Law Center examines U.S. refugee policy as it relates to Colombians who have fled their country in fear of Revolutionary Armed Forces of Colombia (FARC) guerrillas. The report references the provisions of the USA PATRIOT Act and the REAL ID Act which deny refugee status or asylum to “any individual who provides material support to a terrorist organization.”<sup>56</sup> The authors argue that the current definition of material support is so broad that it even includes involuntary support, meaning that an individual who has been coerced to give money or other goods to an organization that is terrorizing him or her would be barred from humanitarian immigration programs.

Additionally, some conservative groups have also expressed concern that our anti-terrorism laws may be unjustly denying refuge to thousands of people in need. They argue that some soldiers who fought alongside Americans against communism in Vietnam are now barred from being granted asylum because the organizations with which

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<sup>56</sup> Mark Fleming, Emi MacLean, and Amanda Taub, editors, *Unintended Consequences: Refugee Victims of the War on Terrorism* (Washington, DC: Human Rights Institute, Georgetown University Law Center, May 2006), 1.

they fought are now considered to be terrorist in nature.<sup>57</sup> The Administration has taken steps to mitigate the negative effects of the material support bar by instituting a process to issue duress waivers. These waivers have made it possible for refugee and asylum candidates previously excluded by the material support bar to be granted asylum. However, there are still some candidates that are adversely affected. It will take time for the U.S. government to find an appropriate resolution that ensures security without hindering genuine humanitarian efforts.

## **B. THE ASYLUM PROGRAM**

The United States asylum program is related to the refugee program, but its processes are different. One of the fundamental differences is that individuals pursuing asylum make their request either at a U.S. port of entry or when they are already present on U.S. soil. This creates different screening challenges from those faced by the refugee program. First, unlike refugees who are identified and referred to the U.S. for screening by another organization like UNHCR, asylum seekers self identify. Second, unlike refugees who are screened and approved prior to arrival in the United State, asylum seekers are already present on U.S. soil before the screening process begins.

Claims for asylum can be divided into two categories: affirmative and defensive. To make an affirmative claim, an asylum seeker applies directly to USCIS and is processed by an Asylum Officer. Defensive claims are handled by immigration judges with the Executive Office of Immigration Review (EOIR) of the Department of Justice. Typically, defensive claims arise when an alien is already in removal proceedings before the court. During the proceedings, the alien makes the claim that he or she would face persecution in his or her home country, and therefore should not be removed from the United States. Some aliens who are in removal proceedings have already made an affirmative asylum claim to USCIS, have been found ineligible for asylum and placed in proceedings, and then wish for the judge to reconsider their claim for asylum. If an immigration judge denies a claim of asylum, the alien may make an appeal to the Board of Immigration Appeals (BIA) also under the Department of Justice.

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<sup>57</sup> Darryl Fears, "Conservatives Decry Terror Laws' Impact on Refugees," *The Washington Post*, January 8, 2007.



In Fiscal Year 2006, 12,873 individuals were granted asylum affirmatively and 13,240 were granted it defensively. The top five countries for affirmative asylum were Haiti, Colombia, China, Venezuela, and El Salvador. These five countries accounted for almost 70% of all affirmative grants of asylum during that reporting period. The top five countries for defensive asylum grants were China, Colombia, Haiti, Albania, and India. These accounted for approximately 48% of all defensive grants of asylum. China alone accounted for approximately 30% of these cases.<sup>58</sup>

Unlike the refugee program, where the United States essentially invites refugees into our country, the government has no control over who applies for asylum. Therefore, it is not possible to use the asylum system to target relief toward nationals of a particular country or region. Additionally, because asylum seekers are already here when they apply for asylum, there are opportunities for fraud. Critics argue that a terrorist willing to cause harm to the U.S. could enter the country, apply for asylum, and then commit a violent act while that application is pending. For this reason, some advocate immediate detention of all asylum seekers until their claim has been reviewed and approved. Others argue that asylum seekers have already faced persecution and are trying to seek relief through the legal system. They state that detention could actually further traumatize asylum seekers and is unfair treatment in comparison to those aliens who have entered the U.S. illegally and remain in the shadows.

There are additional controversies within the asylum system. A report published by the Congressional Research Service in May 2005 reviews current asylum policy in light of post 9/11 security concerns. Entitled, “U.S. Immigration Policy on Asylum Seekers,” it lays out the general state of the U.S. asylum system and highlights some of the tension surrounding these issues. Specifically, it states:

Although there are many who would revive U.S. asylum law and policy, those advocating change have divergent perspectives. Some express concern that potential terrorists could use asylum as an avenue for entry into the United States, especially aliens from trouble spots in the Mideast, northern Africa and south Asia. Others argue that – given the religious,

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<sup>58</sup> Kelly Jefferys, *Annual Flow Report: Refugees and Asylees: 2006* (Washington, DC: Office of Immigration Statistics, Department of Homeland Security, May 2007), 2-3.

ethnic, and political violence in various countries around the world – it is becoming more difficult to differentiate the *persecuted* from the *persecutors*. Some assert that asylum has become an alternative pathway for immigration rather than humanitarian protection provided in extraordinary cases. Others maintain that current law does not offer adequate protections for people fleeing human rights violations or gender-based abuses that occur around the world.<sup>59</sup>

These are critical issues to resolve in the post 9/11 context. If we, as a country, want to use our humanitarian immigration programs to provide for the greater good of the global community, we should be generous in our grants of asylum. However, we do not want to open ourselves to undue risk. The challenges of asylum do not only affect the United States. To place them into a broader context, it is beneficial to review some of the international literature. The United High Commission for Refugees (UNHCR) has produced a number of working papers analyzing humanitarian migration issues from a global view.

In December 2003, UNHCR published a paper entitled *A new asylum paradigm? – Globalization, migration, and the uncertain future of the international refugee regime*. Its author, Jeff Crisp, describes the increasing pressures on asylum and refugee programs since the end of the Cold War. He explains how the geopolitical value of providing humanitarian assistance to developing countries became less clear with the decline of communism. He argues that the increasing globalization of the 1980's and 1990's blurred the distinction between those seeking shelter from persecution and those looking for economic opportunities. This has increased the numbers of migrants requesting asylum from industrialized countries and has strengthened the pressure on their administrative processes and decision making capabilities. The growing processing backlog means that there are fewer relative resources to remove the denied applicants, making it a more attractive, less risky option to abuse the asylum process for economic reasons.

In a second UNHCR working paper entitled *Improving decision-making in asylum determination*, it becomes clear that confusion regarding the ideal path for immigration

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<sup>59</sup> Ruth Ellen Wasem, *U.S. Immigration Policy on Asylum Seekers* (Washington, DC: Congressional Research Service, The Library of Congress, May 5, 2005), summary.

reform is not only a United States problem. The author of this paper, Brian Gorlick, explains how inconsistently the international community applies definitions of asylum and how dysfunctional the world refugee process is. He explains how even asylum applicants from the same country of origin may be viewed differently by each potential receiving country. He uses the example of Iraqi refugees:

In Western Europe some 1% of Iraqi asylum-seekers are granted Convention refugee status, while available figures show that in the United States the Asylum Division of the US Department of Homeland Security recognized 50% of Iraqi applicants as refugees and the US Immigration courts recognized 35% of refugees during the period of March 2003 and July 2004.<sup>60</sup>

This demonstrates how complex the concept of asylum has become. It also emphasizes Gorlick's point that, knowing there are inconsistencies among countries, refugee applicants may engage in "asylum shopping" or applying to several countries in the hope of finding one that will accept them. This activity further denigrates the integrity of the asylum system and opens opportunities for individuals with harmful intentions to take advantage of our indecision.

### **C. TEMPORARY PROTECTED STATUS**

The INA provides discretion for the Secretary of Homeland Security to grant Temporary Protected Status (TPS) for certain groups of aliens present in the United States who cannot return to their home country because of an armed conflict or an environmental disaster. Currently, there are nationals from six countries who hold TPS: Burundi, El Salvador, Honduras, Nicaragua, Somalia, and Sudan. In many cases, aliens with TPS were illegally present prior to being granted TPS and are only allowed to remain in the United States because they have TPS. TPS recipients generally would not meet the legal definition of refugee and therefore are not eligible for asylum or refugee status.

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<sup>60</sup> Brian Gorlick, *Improving Decision-Making in Asylum Determination* (Stockholm, Sweden: United Nations High Commissioner for Refugees, August 2005), 4.

The Secretary of Homeland Security has the authority to grant TPS. Sixty days prior to the expiration of TPS for nationals of a specific country, the Secretary must decide whether TPS for that particular country is extended or terminated and under what conditions. If there is no decision by the prescribed deadline, the TPS is automatically extended for another six months at which time the Secretary may make another decision.

TPS beneficiaries are granted work authorization for the length of their status. Upon termination of their status, they revert to whatever immigration status they held immediately prior to being granted TPS. In many cases, this means being unlawfully present, and in some cases the beneficiary has already been issued a removal order by a judge. A termination of TPS would also terminate employment authorization and would make most beneficiaries subject to immediate removal from the United States back to their home country.

Those countries whose nationals have current TPS have held this status for quite some time. The lengthiest status is that of Somalia which was granted in 1991. The most recent is El Salvador, granted in 2001.

Table 1. Countries With Current or Recently Terminated Temporary Protected Status

Country	Status	Dates	Estimated Number as of January 2006 <sup>61</sup>
Burundi	TPS	11/04/97 – 05/01/09 (Officially terminated without possibility of extension)	30
El Salvador	TPS	03/02/01 – 03/03/09	248,282
Honduras	TPS	12/30/98 – 01/05/09	81,875
Liberia	DED	03/27/91 – 03/31/09 (TPS officially terminated on 09/30/06 but Deferred Enforced Departure granted for 18 months beginning on 09/30/07)	3,792
Nicaragua	TPS	12/30/98 – 01/05/09	4,309
Somalia	TPS	11/04/97 – 03/17/08	324
Sudan	TPS	11/4/97 – 11/02/08	648

In all cases, the TPS beneficiaries have been present in the United States for a minimum of six years, and in the case of Somalia, sixteen years. This raises the question of what ‘temporary’ actually means. One could assume that in a period of ten to fifteen years, an individual would develop ties and equities that would make that person feel more permanent than temporary.

One case to consider is that of Liberia. Certain nationals of Liberia were granted TPS in 1991 based on an armed conflict occurring in their home country. In 2006, the Secretary of Homeland Security, in consultation with the Secretary of State, determined that the conditions in Liberia had improved to the point where the TPS beneficiaries could safely return home. The Secretary of Homeland Security terminated TPS for Liberia, but allowed Liberians with TPS to maintain employment authorization for an additional twelve months before their required departure from the United States. As the date of expiration for the employment authorization neared, members of the Liberian community began to protest the termination of their status on the basis that they believed it was not safe to return home. Their protests were met with sympathy from the

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<sup>61</sup> Ruth Ellen Wasem and Karma Ester, *Temporary Protected Status: Current Immigration Policy and Issues* (Washington, DC: Congressional Research Service, January 27, 2006), 5.

Administration which issued Deferred Enforced Departure (DED) for all Liberian TPS grantees so that they could remain in the United States an additional eighteen months.

In a case like Liberia, or even Somalia, it could seem that the term ‘temporary’ has been used somewhat arbitrarily. Is it really reasonable to expect that individuals who have been living and working in the United States for ten years or more would readily return home? Is it even to the advantage of the United States for them to do so?

#### **D. VICTIMS OF TRAFFICKING**

An area of humanitarian immigration policy that receives less attention than the refugee and asylum programs is the relief provided to victims of trafficking. While the number of individuals receiving benefits may be smaller, the program should still be considered a vital element of the humanitarian assistance that the United States provides.

Trafficking in persons is a modern-day form of slavery, a new type of global slave trade. Perpetrators prey on the most weak among us, primarily women and children, for profit and gain. They lure victims into involuntary servitude and sexual slavery. Today we are again called by conscience to end the debasement of our fellow men and women. As in the 19<sup>th</sup> century committed abolitionists around the world have come together in a global movement to confront this repulsive crime...Defeating human trafficking is a great moral calling of our day.<sup>62</sup>

The United States, along with its international partners, is engaged in a victim-centered approach to ending human trafficking. This means that the government seeks not only to punish the perpetrator of the crime, but also to care for the victim. Greater attention to the needs of victim reduces the effects of the trauma on the individual but also helps to encourage greater cooperation with law enforcement in prosecution of the trafficker.

Cooperation of victims cannot be bought or forced, but through the consistent provision of assistance that is not tied to performance in court, victims assured of their rights regain the confidence to speak out for themselves... When this balance is struck effectively, everyone wins – the

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<sup>62</sup> *Trafficking in Persons Report 2007*, (Washington, DC: U.S. Department of State, June 2007), from opening letter signed by Secretary of State Condoleezza Rice.

state, the victim and society – as a victim finds his or her voice and an exploiter is rendered speechless as justice is handed down.<sup>63</sup>

Humanitarian immigration policy plays a direct role in fighting the phenomenon of trafficking in persons. On October 28, 2000 President Bill Clinton signed into law the Victims of Trafficking and Violence Protection Act of 2000.<sup>64</sup> A provision of the new legislation was the establishment of the ‘T-visa’ which would provide immigration benefits to victims of trafficking. The law set a cap at 5,000 visas per year. Additionally, after three years in T-visa status, beneficiaries would be eligible to adjust to permanent resident status if they were of good moral character, had not “not unreasonable refused to assist in trafficking investigations or prosecutions” and “would face a significant possibility of retribution or other harm if removed from the United States”.<sup>65</sup>

Not only is trafficking a crime against human dignity. There is also evidence that, in some cases, it is linked to terrorist mobility and financing. In a statement to the House Committee on International Relations on June 25, 2003, Professor Louise Shelley of the American University, cites examples of links between trafficking and terrorism. Cases included criminal organizations in the former Soviet Union and Southeast Asia where the channels to move trafficking victims and money are also used in support of terrorist networks.<sup>66</sup> Consequently, fighting to eradicate trafficking in persons enhances the moral integrity of the United States and reduces a possible source of terrorist financing.

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<sup>63</sup> *Trafficking in Persons Report 2007*, 37.

<sup>64</sup> Francis T. Miko, *Trafficking in Persons: The U.S. and International Response*, (Washington, DC: Congressional Research Service, July 7, 2006), 10.

<sup>65</sup> *Ibid.*, 11.

<sup>66</sup> House Committee on International Relations, Subcommittee on International Terrorism, Nonproliferation and Human Rights, *Global Trends in Trafficking and the “Trafficking in Persons Report,”* 108<sup>th</sup> Congress, 1<sup>st</sup> Session, June 25, 2003, 61.

#### **E. ENHANCING IMMIGRATION ENFORCEMENT: IT IS NOT JUST ABOUT GRANTING BENEFITS**

For humanitarian immigration benefits to have integrity, they must be partnered with an adequate enforcement capacity that can be brought to bear on anyone engaged in fraud. Once an applicant has applied for a benefit and that benefit has been denied, there must be a swift consequence. Otherwise, there is no measurable difference between those granted benefits for legitimate reasons and those illegally present in the United States. This is especially true for benefits like asylum and Temporary Protected Status where the applicants are already in the United States before they even submit their request to the government. If they are found to be ineligible for the requested benefit and do not qualify to remain in the United States under another program, it is essential that they leave voluntarily or be removed.

Under present operational capacity, an expedient removal is not always guaranteed. In recent years, both the Administration and Congress have recognized that removal is an essential element to effective immigration enforcement. It does no good to apprehend an individual or to deny that person a benefit if he or she is then free to roam the country without any legal status. This is especially true of someone who has committed a crime since entering the country or who has been denied a benefit because background checks showed that they had already engaged in criminal activity prior to entering the United States. The responsibility for conducting deportations lies with the Detention and Removal program (DRO), housed within U.S. Immigration and Customs Enforcement (ICE), a component agency of the Department of Homeland Security. For Fiscal Year 2008, the President's budget did request increased funding for the DRO.<sup>67</sup> Through its appropriations process, the U.S. Congress provided more funding for DRO than even the President's budget has requested.<sup>68</sup> Clearly, this is a step in the right

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<sup>67</sup> The Office of Management and Budget, *The Budget for Fiscal Year 2008: The Department of Homeland Security*, 76-77, <http://www.whitehouse.gov/omb/budget/fy2008/budget.html> [Accessed January 13, 2008].

<sup>68</sup> Consolidated Appropriations Act, 2008, Public Law 110-16, 110<sup>th</sup> Congress (2008), 968.



direction. However, is it far enough? Do these new funding levels, combined with current operational processes support an enforcement program that enhances the integrity of the immigration system as a whole?

A report published in March 2007 by the Office of the Inspector General for the Department of Homeland Security would argue that real progress is lacking. ICE has, in fact, increased its reported number of removals quite steadily over the last few years. However, this reporting can actually be misleading. A brief review of the removal process will demonstrate this. To be considered ‘removable’ by the U.S. government, an individual must have been issued a removal order by an immigration judge. This generally means that the person was either apprehended through some sort of enforcement operation or was denied a benefit for which he or she had applied and then ordered to appear before a judge who then issued the removal order. Often, during the removal proceedings before the judge, a person will request asylum on the grounds that they underwent persecution in their country of origin or would reasonably expect to be persecuted should they return home to their country of origin. If this defensive request for asylum is denied, the judge issues a removal order and then the person is required to leave the country or be removed by ICE. Upon issuance of the removal order, the person is not necessarily remanded directly to the custody of ICE. Often they are allowed to leave the court to take care of personal matters, and often they are never actually removed. Instead, they become what is known as a ‘fugitive’. ICE defines a fugitive, for immigration purposes, as someone who has been issued a removal order by a judge, but cannot be confirmed as having departed the United States. According to the March 2007 Inspector General report on this issue, in September 2001, there were 331,734 fugitives in the United States.<sup>69</sup> To gain some perspective, it is helpful to know that in Fiscal Year 2005, ICE conducted approximately 208,000 removals.<sup>70</sup> In other words, the entire number of removals conducted in one year is more than 30 percent fewer than the fugitive population as reported in 2001.

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<sup>69</sup> Office of the Inspector General, *An Assessment of United States Immigration and Customs Enforcement’s Fugitive Operations Teams* (Washington, DC: Department of Homeland Security, March 2007), 12.

<sup>70</sup> Mary Dougherty, Denise Wilson and Amy Wu, *Immigration Enforcement Actions: 200*, (Washington, DC: Office of Immigration Statistics, Department of Homeland Security, November 2006), 1.

As a result of the large, and growing, fugitive population, ICE began to deploy special ‘Fugitive Operations’ teams in 2003. These teams were designed specifically to seek out fugitives, apprehend them, and remove them from the United States. The number of these teams has grown each year since 2003. Unfortunately, even with these teams in place, the problem has not been resolved. According to the Inspector General, there were 536,644 fugitives recorded in September 2005 and in August 2006, there were 623,292.<sup>71</sup> This is an increase of more than 80,000 fugitives in one year. By comparison, the entire number of fugitives apprehended and removed between March 2003, when the fugitive operations teams were deployed, and June 2006 was 37,443.<sup>72</sup> In other words, the amount of growth in the fugitive population in one year was greater than the number of fugitives removed over the course of three years.

This is a problem that will not be fixed quickly or with incremental increases in funding and personnel. Resolving this issue will take fundamental changes in the nation’s immigration system. This thesis is not designed to prescribe a strategy for comprehensive immigration reform. However, it is designed to determine a new framework for humanitarian immigration policy. One of the clearest ways of reducing risk in the adjudication of humanitarian benefits is to be sure that those who try to defraud the system experience a consequence that will deter others from trying to engage in fraud. Our current removals process does not provide this deterrence and it must be reconfigured to do so.

## **F. REVIEWING OUR POLICIES IN PRACTICE: WHAT CAN WE LEARN FROM OUR PAST?**

In the abstract, our immigration system, and the humanitarian benefits it includes, appear fairly complex. To truly understand how these benefits are implemented, it is helpful to review the tools and strategies that the U.S. government has employed in its dealings with particular countries. Chapter II of this thesis has already identified that it is in our interest as policy makers to review the successes and failures that we encountered during the Cold War. This is especially the case for humanitarian immigration policy

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<sup>71</sup> Office of the Inspector General, 12.

<sup>72</sup> Office of the Inspector General, 13.

which, during the implementation of the containment strategy, was deliberately used toward undermining our enemies, building global image of the United States, and enhancing our national security. The following chapter will examine the experience of three countries: Vietnam, Cuba, and Somalia. Each experienced humanitarian crises at different periods in history. A review of the U.S. response to these crises will help to illustrate how the Federal government has used our immigration policies both to relief strife and to further our foreign policy and national security efforts in the past.

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## **V. CASE STUDY: AN HISTORICAL LOOK AT HUMANITARIAN IMMIGRATION**

Before determining a path forward for humanitarian immigration policy in the United States, it is helpful to look back to past cases where the U.S. has provided humanitarian assistance through the use of immigration benefits. This chapter will examine three individual countries, the circumstances under which they needed assistance, the immigration-related tools implemented, the outcome of using those tools, and the current state of each country. Each case study will conclude with a description of lessons learned from the experience of the United States with that country. It will also include elements that should be considered as we develop an humanitarian immigration strategy in 2008.

Humanitarian immigration programs are not new to the U.S. immigration system. After the Second World War, the United States began to implement refugee resettlement programs for those who faced persecution in their home countries. For the most part, early refugee programs and legislation were based on specific ethnic groups and nationalities. There was no comprehensive refugee legislation in place. This was also true during and immediately after the United States intervention in Vietnam during the late 1960s and 1970s.

### **A. VIETNAM**

In one of its most resource-intensive efforts to contain communism during the Cold War, the United States sent significant amounts of military support to South Vietnam in the 1960s and early 1970s. After North Vietnam took control of South Vietnam in 1975, many Vietnamese feared the new regime and began to flee in large numbers. Often dubbed “boat people” in the media, these refugees numbered in the hundreds of thousands and presented a significant strain on the surrounding countries. At the same time the United States government began a series of attempts to evacuate groups of Vietnamese and resettle them in the United States. However, the sheer numbers of the

migration proved to be an enormous challenge. Additionally, communist pressures in Laos and Cambodia sparked the flight of even more refugees, primarily to camps in Thailand.

In 1979, the United States government initiated the Orderly Departure Program (ODP) which operated from the American Embassy in Bangkok and a location in Ho Chi Minh City. The purpose of the program was to provide an organized set of resettlement options to discourage migrants from taking dangerous steps, such as travel in small boats, to escape the tyranny of the communist regime. During its lifetime, the ODP “successfully processed over 523,000 Vietnamese for admission to the U.S. as refugees, immigrants, and parolees.”<sup>73</sup> Through the ODP and other programs, in total, over 1.4 million Indochinese have been resettled in the U.S. since 1975 and about 900,000 of these were from Vietnam.<sup>74</sup> To put these numbers into perspective, the total number of refugees from all countries resettled in the United States in Fiscal Year 2006 was approximately 41,000. Prior to 1975, the U.S. had never participated in such a large resettlement program. Therefore, the extremely grand scale of the Indochinese migration created a significant challenge to both the U.S. government and those local communities where the new residents resettled and integrated.

The migration pressures on the United States throughout the late 1970’s and early 1980’s as a result of unrest in Southeast Asia were unprecedented. However, the federal government chose to facilitate the process and welcome the new residents. This strategy is entirely consistent with the greater containment policy that the U.S. had followed since early in the Cold War. Additionally, the general sentiment among the American population was one of sympathy for migrants who had suffered under the tyranny of communism. In very blunt terms, the resettlement of Indochinese migrants directly supported the U.S. national security strategy in its efforts to win the Cold War.

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<sup>73</sup>*Fact Sheet: Refugee Admissions Programs for East Asia*, (Washington, DC: Bureau of Population, Refugees, and Migration, U.S. Department of State, January 16, 2004).

<sup>74</sup> Ibid.

## **B. THE REFUGEE ACT OF 1980**

As a result of magnitude of Indochinese refugees during the late 1970's, the United States began to examine its refugee policies to create a more formalized structure for future humanitarian crises. In March of 1980, Congress passed the Refugee Act of 1980 (Public Law 96-212) and on March 17, 1980, President Jimmy Carter signed it into law. This new legislation aimed to solve multiple problems. First, it included a definition of the term "refugee" which brought U.S. practice into alignment with the United Nations Protocol on the Status of Refugees and removed the necessity of defining refugees eligible for resettlement by a specific location. The law also raised the annual limit of refugees and drew a clear distinction between refugees outside the United States and those seeking asylum within our borders. It also created a series of federal resettlement programs and altered the implementation of parole authority to be used on a case-by-case basis rather than for groups of migrants.

## **C. CUBA**

The case of U.S. humanitarian immigration policy as it relates to Cuba also followed rather closely with the containment strategy implemented during the Cold War and then became less clear after the fall of the Soviet Union. After the rise of Fidel Castro and his communist regime in the 1960's the United States experienced its first flow of migrants from Cuba. The United States encouraged this as a strategy toward creating a brain drain in Cuba that would eventually undermine the strength of the communists. Migration flows then leveled off during the 1970s until increasing unrest among the Cuban community led to the Mariel Boatlift in 1980. This occurred very soon after the passage of the Refugee Act of 1980 and, like the Indochinese experience, was a significant challenge to the U.S. immigration system.

The Boatlift was not entirely a surprise for the United States government. Weeks before, thousands of Cubans had stormed the Peruvian Embassy in Havana seeking asylum. Likewise, there was pressure from the Cuban exile community in South Florida to allow Cubans to travel to the U.S. for asylum. The Mariel Boatlift actually began with boats from the United States, funded by the exile community, traveling to Cuba to

transport refugees to Florida. Eventually, vessels began to leave from Cuba as well with the final outcome meaning that 125,000 Cubans illegally entered the United States within the period of six months.<sup>75</sup> Although, the President had signed the Refugee Act of 1980 a few months earlier, the Administration did not immediately grant refugee status to the Cuban migrants. The Refugee Act of 1980 had assumed that refugees would be prescreened far beyond U.S. borders long before being admitted to the United States. Instead, the migrants from the Mariel boatlift were already on U.S. soil before they could be vetted and before proper resettlement arrangements could be made. Therefore, the federal government granted a 60 day parole to the thousands of people who had arrived illegally on U.S. shores. The intent was to give the U.S. government time to decide upon a policy and to allow for appropriate screening and identification of a sponsor for each migrant. Migrants were housed at military facilities until it was deemed appropriate to release them into the community. Because so many were headed to the Miami area, this became a significant burden on communities in South Florida. It is estimated that, as a result of the Mariel Boatlift, the population in Dade County grew by 10%.<sup>76</sup>

#### **D. SOMALIA**

In both the cases of Vietnam and Cuba, the primary source of migratory pressure was the existence of an oppressive communist regime. Likewise, in both situations the underlying strategy for the U.S. response, in addition to providing protection from persecution, was to undermine the stability and integrity of communism as an acceptable form of governance. After the fall of the Soviet Union in 1989, the greatest international threat to U.S. national security was no longer so clearly defined. No longer was there a clear relationship between our efforts to provide humanitarian relief and a larger foreign policy strategy. The moral obligation behind humanitarian assistance still existed as part of our nation's values, but the strategic value had become much murkier.

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<sup>75</sup> Ruth Ellen Wassem, *Cuban Migration Policy and Issues* (Washington, DC: Congressional Research Service, January 19, 2006), 1.

<sup>76</sup> Ronald Copeland, "The Cuban Boatlift of 1980: Strategies in Federal Crisis Management," *Annals of the American Academy of Political and Social Science*, Vol. 467, (May, 1983): 149.



This confusion is evident in the U.S. response to humanitarian crisis in Somalia in the early 1990's. Somalia initially gained its independence in 1960 after a long colonial rule. Later, in 1991, the Somali president was ousted and the country fell under the decentralized and violent rule of multiple warlords. The result was a massive humanitarian crisis. In 1992, in an attempt to restore order and protect the delivery of humanitarian aid, President Bill Clinton ordered U.S. troops into Somalia. The result was an increase in chaos and eventually U.S. forces left. To this day, Somalia remains without a functional centralized government, although warlords often govern at the local level and the Islamic Courts Union has made attempts to take over the country and implement Sharia law.

Beyond the devastating effects of the Somali crisis on its residents, the lack of a recognized government structure provides additional challenges to U.S. policy makers. First, many Somali nationals have fled to neighboring countries such as Kenya, increasing pressure on those states. Second, there is evidence of anti-U.S. terrorist organizations within Somalia. Therefore, any refugee program for Somalia people must include appropriate screening mechanisms to ensure that the U.S. only invites bona fide refugees to our shores. This concern is clearly evident in the statistics regarding refugee arrivals from Somalia before and after September 11, 2001. In Fiscal Year 2000, the United States government admitted 6,026 refugees from Somalia. This accounted for approximately 8% of all refugee arrivals for that year. In Fiscal Year 2002, the number of Somali refugee arrivals dropped to 237, accounting for less than 1% of all refugee arrivals. This indicates a clear reaction to security concerns. Since 2002, as U.S. security provisions have become more practiced, the number of refugee arrivals from Somalia has steadily increased. In Fiscal Year 2006, there were 10,357 refugee arrivals from Somalia, accounting for the highest number from any one country at 25% of all refugee arrivals in the United States.<sup>77</sup>

Since the early 1990's, the United States has had not diplomatic presence in Somalia. Without a centralized, internationally recognized, Somali government, foreign

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<sup>77</sup> 2006 *Yearbook of Immigration Statistics*, (Washington, DC: Office of Immigration Statistics, U.S. Department of Homeland Security, September 2007), 40.

policy options for the United States become limited. Unlike the days of communism, when the threat was clear and obvious, this new set of risks is much more obscure. How does the instability in Somalia affect U.S. national security? Can we have an influence on finding a sustainable solution? Are our immigration policies contributing to greater stability or simply providing basic relief to humans in immediate danger?

## **E. LESSONS TO BE LEARNED**

Each of the three examples presented above provides lessons to be applied toward our evolving humanitarian immigration strategy. First, the experience with Vietnam illustrates that armed conflict can create large-scale migration. In the instance of the Indochinese migration of the 1970's, the persecuting entity was a communist regime. The U.S. government had a declared opposition to communism and the American people were sympathetic to resettling thousands of refugees fleeing tyranny. The geographical location of Southeast Asia, far from U.S. soil, allowed for a more controlled, organized resettlement process.

In the case of Cuba and the Mariel boatlift, the mass migration arrived on U.S. shores and attempted to settle in one specific community. Even with new refugee legislation in place, the federal government was not adequately prepared to process so many individuals in such a short period of time. Americans still felt sympathy for victims of communism but, the desire to provide a safe haven was not supported by an infrastructure of sufficient capacity.

The case of Somalia provides additional points to consider. The risk to U.S. national security created by instability in Somalia is not so clear. Certainly, there is significant moral value in providing assistance to those in refugee camps. However, the strategic value of this effort is not so easily defined. Additionally, there is a risk that a terrorist could pose as a refugee, enter the United States and engage in a violent act. Measuring this risk against the value of providing relief from humans facing real persecution is a challenge that has not yet been overcome by U.S. policy makers.

## **VI. FUTURE CHALLENGES TO BE ADDRESSED BY A HUMANITARIAN IMMIGRATION STRATEGY**

Without an established national strategy for humanitarian immigration, the United States is at risk for encountering a variety of humanitarian and homeland security crises for which policy makers have not adequately prepared. Today in 2008, we face a jihadist threat that puts us at risk for terrorism activity on our soil and against our citizens and interests throughout the world. Like the extremist ideology of the Cold War, the current threat will eventually be thwarted. However, as it is fought and after its demise, we will face additional threats to our homeland security, both natural and manmade, many of which could be mitigated through the strategic use of humanitarian programs.

The purpose of this chapter is to identify examples of potential future concerns for the United States. Each of these examples could occur as a result of factors outside the control of the United States. However, because of increasing globalization and the chaos associated with an unforeseen humanitarian crisis, the United States would be affected by any of these examples. Each of these examples could be a thesis unto itself and the list below is certainly not exhaustive. Its purpose is to underscore the urgency of establishing policy options now, rather than waiting for an event to occur.

### **A. MIGRATION FROM A COUNTRY WITH A HOSTILE REGIME**

Much of the current homeland security debate focuses on the prevention of asymmetric attacks conducted by non-state actors. Certainly, this is a legitimate threat deserving significant resources and innovation toward sufficient tools and strategies for prevention and, at times, response. However, the presence of an asymmetric threat does not mean that the U.S. could face no harmful consequence from the existence of a hostile state actor.

One case to consider is Venezuela where the current president has made outward statements against the United States and who has taken actions within his own country leaning toward a much more oppressive state. President Hugo Chavez has been characterized as possibly being the Fidel Castro of this century. While that

characterization may still be somewhat exaggerated, it is not unreasonable to think that he will continue to pursue policies that are both hostile toward the United States and oppressive toward his own people.

While there is still no sign of a mass migration from Venezuela to the United States, immigration statistics do show an increase in asylum cases being granted to Venezuelan citizens. In 1997, the U.S. granted asylum affirmatively to 9 Venezuelans. In Fiscal Year 2005, the number was 955, and in Fiscal Year 2006, the number rose to 1,085.<sup>78</sup> For defensive asylum, there were 8 cases granted to Venezuelans in Fiscal Year 1997 and 274 in Fiscal Year 2006.<sup>79</sup> Compared with the total number of asylum cases granted annually, Venezuelans comprise a small percentage, but it is worthwhile to note the percentage of growth. Should President Chavez continue to implement increasingly restrictive policies, it is reasonable to expect that there will be a growth in the number of Venezuelans seeking asylum. In fact, a New York Times article published on January 23, 2008 highlighted the growth of the Venezuelan community in the United States, especially in south Florida. The article cites census data, stating that the Venezuelan population in the U.S. in 2000 numbered 91,507 and then in 2006 numbered 177,866.<sup>80</sup> These figures do not outwardly account for those Venezuelans who may plan to go home. However, they do present a stark contrast between two years within the same decade and during a particularly tumultuous time in Venezuela's political life.

Compared to the influx of migrants from countries such as Mexico and China, Venezuela's numbers are still manageable. Nonetheless, now is the time when the United States government should develop a strategy for how to handle any future increases that may occur. Several policy questions should be considered. Do the criteria affecting Venezuelans meet the criteria established by the U.S. as being appropriate for asylum? Is granting asylum in large numbers consistent with our humanitarian immigration strategy and our larger homeland security mission? What type of burden

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<sup>78</sup> 2006 *Yearbook of Immigration Statistics*, 45.

<sup>79</sup> *Ibid.*, 48.

<sup>80</sup> Kirk Semple, "Rise of Chavez Sends Venezuelans to Florida," *New York Times*, January 23, 2008.

sharing should we expect from our international partners? These questions, and many more, should be answered before a crisis occurs.

## **B. A CHEMICAL, BIOLOGICAL, OR RADIOLOGICAL ATTACK ABROAD**

The United States is engaged in a variety of initiatives to prevent the movement of a chemical, biological, or radiological threat across our borders. We also have taken steps in preparing our own communities for the possible detonation of such a device on our soil. All of these initiatives are worthwhile as the consequences from a chemical, biological, or radiological attack would be among the most devastating of any threat in today's environment.

Even with all of the prevention and response initiatives that are currently underway, there is still some need for additional thought. While we may do all that we can to prevent an attack at home, we could still be affected rather severely by an attack in another country. If there were to be an attack against one of our neighbors or one of our allies, we would likely need to engage in some sort of humanitarian response. Part of that response could include implementation of immigration-related relief. Whether it is allowing nationals of the affected country to remain in the United States for a period of time or actually resettling refugees, we would likely want to provide some sort of relief. It is impossible to predict what type of incident could occur and what the level of damage would be. However, it is possible to try to identify the criteria under which the United States would begin to utilize its immigration-related tools. Developing a series of scenarios and a set of appropriate response criteria would help government officials determine what decisions might need to be made during a crisis involving a weapon of mass destruction against one of our allies or within a country without the infrastructure to conduct an adequate response.

## **C. PANDEMIC INFLUENZA**

The possible occurrence of pandemic influenza adds yet another wrinkle to the problem presented by a chemical, biological or radiological attack on foreign soil. In the case of a bomb or explosion, the effects, although devastating, would be localized. The

U.S. response could be measured by the number of people affected and that number would be relatively static. However, the effects of a pandemic could not be so easily predicted or even counted accurately once the incident has begun.

The U.S. government has made great strides in the last few years toward establishing a national strategy to deal with the possibility of pandemic influenza in our own communities. While the strategies may not be flawless, there has certainly been considerable thought given to the issue. However, a pandemic incident overseas could have ramifications both for the humanitarian immigration programs being conducted now and for those policy decisions that may be necessary as a result of the spreading illness. An outbreak in a refugee camp could have a devastating effect on U.S. government and NGO employees working there. An incident of pandemic flu in one of our neighboring countries could incite residents to flee from the disease, possibly choosing the United States as their destination point. Some of those who choose to flee may already be carrying the disease themselves. What steps should the United States take in such a situation? What is our responsibility among the international community? How would we respond to a mass migration of individuals who may be carrying a highly contagious disease? Would we continue to deport individuals unlawfully in the United States back to their country of origin if we know there is a pandemic there? All of these questions should be discussed now before we face these problems for real.

#### **D. CLIMATE CHANGE: “ENVIRONMENTAL REFUGEES”**

The effects of global warming and other manifestations of climate change can alter an environmental landscape in ways that make it uninhabitable. Unlike large scale, abrupt natural disasters, the effect of climate change can often be very gradual but, nonetheless, devastating. For example, many islands in the Pacific currently face significant loss of coastline due to rising sea levels. Additionally, the elevated levels of salt water can infiltrate previously clean sources of drinking water, rendering them virtually useless. In other parts of the world, such as Africa, increasing desertification is causing people to move in search of areas more hospitable to human survival. International organizations such as the United Nations have begun using the term ‘environmental refugees’ to describe individuals forced relocated because of climate

change. The current legal definition of ‘refugee’ as accepted internationally and in U.S. statute does not consider migration due to changes in the environment.

If there were to be a mass migration as a result of the effects of climate change, the U.S. immigration system would not have the appropriate policies in place. Clearly, this is not a problem to be solved by the United States alone. For example, many of the Pacific Islands facing devastation due to sea level rise are geographically closer to Australia or New Zealand. The United States may not need to resettle citizens of those islands, or may choose to resettle a limited number. In any case, those international discussions should occur now, rather than later. The decision-making around these issues should take place before we are faced with humanitarian crisis. A strategy for humanitarian immigration policy would help us to make careful and sustainable decisions regarding future challenges with ‘environmental refugees’.

#### **E. WHAT SHOULD WE DO NOW?**

Each of the possible situations listed above presents its own series of challenges to the United States government and the greater homeland security mission. Each of them also involves policy decisions related to our humanitarian immigration programs. As dire and as confusing as the situation may seem, we do have the opportunity, if we act expediently, to minimize the potential harm done. Planning is a lot less resource intensive than reacting poorly after an incident has occurred. We must begin to develop a long-term strategy that will help us to make the right decisions when the time comes. A national strategy for humanitarian immigration policy would be a good start.

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## **VII. POLICY RECOMMENDATIONS AND NEXT STEPS**

### **A. SYNTHESIS OF THE KEY POINTS**

The previous chapters of this thesis have presented a great deal of information, much of which may appear to be disjointed or, perhaps, even conflicting. To settle upon the elements of a national strategy for humanitarian immigration policy, it is helpful to review the points illuminated so far.

Chapter II reviewed some of the key literature on theories regarding terrorism and homeland security. The review involved discussion of the psychological perspective, ideals about organizational theory, and elements of political science and public policy. The concepts of that chapter are organized into the following themes:

- There is rationale behind terrorist activity.
- The existence of an extremist threat requires us to examine how our values fit in the context of the global community.
- We can learn from the successes of our past.
- We need a strategy to win the war of ideas.
- A successful strategy requires investment in the global good.

Chapter II also introduced the concept of risk management as it relates to humanitarian immigration policy. If we accept that there will always be certain risks associated with extending protection to the vulnerable, we can examine ways to successfully buy down that risk. Each of the themes listed above is critical to the logic of this thesis. The order in which they are listed is deliberate because each builds upon the one before it. For the purposes of developing a strategy for humanitarian immigration policy, the fifth theme is the most important. In fact, it makes the argument for why such a strategy is even needed. By wisely using the humanitarian immigration tools we have at our disposal, we can make a strategic contribution to the global good. We can

enhance stability in unstable areas. We can provide opportunities for oppressed people to be productive. We can undermine the arguments of those using extremist ideologies to promote terrorism.

To build upon the general theories regarding terrorism, Chapter III discussed several themes specific to immigration policy. It identified that our immigration policy priorities traditionally have supported cultural, economic, and moral interests. The integrity of our immigration system directly affects our ability to carry out our homeland security strategy and, although there is general agreement that our immigration system does not serve the country's needs, there is no consensus on what immigration reform should include. Additionally, terrorists could be immigrants, but not necessarily. Reforms to our immigration system would serve as a crucial part to a layered defense against the extremist threat.

Chapter IV tightened the focus of the thesis from general immigration policy to those programs with a humanitarian focus. It demonstrated that our system was set up in accordance with international agreements and includes tools to provide both permanent resettlement and temporary humanitarian relief. It also illustrated the difference between the refugee admissions approved by the President and those that actually occur. Chapter IV also demonstrated that while some low risk populations, especially those with Temporary Protected Status are vetted regularly, others, such as denied asylum seekers, can remain unlawfully present for many years.

Finally, Chapter V examined specific country examples to show that the U.S. has had the capacity to resettle large groups of humanitarian migrants in the past. It showed that the U.S. refugee processing system assumes overseas vetting and that large-scale migration directly to the United States requires alternate planning efforts. It also explained that humanitarian-based migration from countries with a known terrorist element provides an additional challenge in determining thorough, but efficient, screening procedures. Each of these points combined with those from earlier chapters point to the importance of more strategic use of humanitarian immigration programs.

Implementation of a strategy for humanitarian immigration policy requires a significant shift in the way the U.S. government conducts the business of those programs.

Some objectives and tasks would only require policy changes within individual agencies. Others would require changes to immigration law. The final task, on establishing a public reassurance strategy, would actually require steps toward influencing the perception of risk related to humanitarian immigration programs.

It should also be noted that the author does not claim credit for personally identifying any of the individual objectives or tasks listed below. All have been gleaned either from research for this thesis or from observation of immigration policy successes and failures over the past ten years. The purpose of this thesis is purely to bring each of these ideas together into a coherent strategy that can be implemented in furtherance of the United States homeland security mission. The strategy below begins with a strategic goal and a set of guiding principles to set the conceptual framework for the series of more tactical objectives and tasks that follow.

## **B. A NATIONAL STRATEGY FOR HUMANITARIAN IMMIGRATION POLICY**

### **1. Strategic Goal**

The United States will contribute to the global good by targeting its humanitarian immigration programs toward promoting democratic stability, protecting the oppressed, and undermining the extremist ideologies behind terrorist activity.

### **2. Guiding Principles**

Protecting the Vulnerable: Humanitarianism and protection of the persecuted is part of the fabric of our country. It is one of primary American values on which our country was founded and it is also a principle that is shared across multiple cultures, religions, and political philosophies.

Enhancing Our Alliances: Humanitarianism is a mechanism by which we can demonstrate our own values, relieve strife in other parts of the world, and increase our base of allies and partners worldwide.

Improving America's Image: The effort to strengthen out homeland security and significantly reduce the asymmetric threat against us will be a long one requiring not only material strength but also an improved perception of our country throughout the world.

Managing Risk: There are risks associated with humanitarian immigration, such as the possibility that a potential terrorist could pose as a refugee or asylum seeker to gain access to the United States. We must identify and implement innovative tools to buy down that risk to an acceptable level.

### **3. Objectives**

Objective 1: Establish a series of objective criteria for recipients of humanitarian immigration benefits.

- Task 1.1: Establish situational criteria and priorities and use regional caps as targets rather than ceilings for refugee admissions.
- Task 1.2: Set criteria for the use of immigration tools in response to a humanitarian crisis.

Objective 2: Establish strategic partnerships to enhance U.S. decision-making.

- Task 2.1: Continue and enhance inter-agency, inter-sector, and international partnerships to eradicate human trafficking, bring violators to justice, and provide relief to victims.
- Task 2.2: Engage U.S. and international partners to identify more innovative ways to screen applicants.
  - Item 2.2.1: Work with the private sector and academia to further develop the use of biometric data, such as fingerprints and DNA, in screening processes.
  - Item 2.2.2: Continue to pursue new avenues for information sharing with foreign governments and among U.S. agencies.

- Item 2.2.3: Work with academia to develop behavioral criteria that could be used to identify potential terrorists.

Objective 3: Implement risk management principles by directing resources to where they are most effective

- Task 3.1: Set a five year deadline for Temporary Protected Status (TPS)
- Task 3.2: Enhance immigration enforcement, especially the detention and removal program, to ensure that asylum and TPS applicants denied immigration benefits are removed expediently from the United States
- Task 3.3: Establish a public reassurance strategy for threats presented or carried out by a recipient of or an applicant for humanitarian immigration benefits

Each of the tasks outlined in the strategy above could almost be a thesis unto itself. All are broad policy recommendations that would require a significant amount of cooperation, planning, and in some cases, material resources to implement successfully. However, the key to a good strategy is to lay out first the optimal goals and objectives, and then later determine the methods and timeframes for implementation. Without an optimistic strategy, success can never be achieved or even approached. Each task outlined in this national strategy for humanitarian immigration deserves some narrative of its own to explain both its inclusion in the strategy and some of the challenges that it will present.

**C. TASK 1.1: ESTABLISH SITUATIONAL CRITERIA AND PRIORITIES AND USE REGIONAL CAPS AS TARGETS RATHER THAN CEILINGS FOR REFUGEE ADMISSIONS**

Each year the President of the United States announces the overall cap of refugee admissions for the upcoming fiscal year. That cap is then broken down by region to reflect where the areas of the world where the United States will direct its refugee resettlement resources. As was described earlier in this thesis, in the last few years, the

United States has failed to admit enough refugees to meet the annual cap. This sends the wrong message to the international community. Using the Presidential Determination as targets rather than ceilings would make a much more positive statement about the intentions and behavior of the United States.

An additional way to enhance the credibility of the U.S. government's message to the rest of the world would be to establish transparent criteria for situations where refugee resettlement should be considered. Transparency and discretion are not zero-sum counterparts. Because refugee situations are often caused by situations of chaos and unrest, it is not always possible to determine where a crisis will occur in a given year. Clearly, there are some areas where there has been a protracted disruption and the Administration can predict that there will be a need for a large number of admissions. However, that is not always the case. Identifying criteria for what types of migrants should be considered for refugee status, especially for resettlement within the United States, would create a more even playing field in which it does not seem that the U.S. acts arbitrarily. Additionally, communicating those priorities to the outside world would also help to inform the decision-making of other resettlement countries as they determine what portion of the burden they are able to shoulder. If a goal of the U.S. government is to encourage resettlement programs in other countries, transparency of priorities is a good step toward building the necessary relationships for a more level international resettlement agenda.

#### **D. TASK 1.2: SET CRITERIA FOR THE USE OF IMMIGRATION TOOLS IN RESPONSE TO HUMANITARIAN CRISES**

The United States is often called upon to provide relief during crises abroad, whether due to natural disasters or armed conflicts. Some of the tools available to the U.S. government are various types of immigration benefits. The federal government can designate Temporary Protected Status to allow certain migrants to remain in the United States so that their return home does not create a burden on their country of origin. In place of TPS, the government also has the discretion to grant Deferred Enforced Departure (DED) and stays of removal. In cases of oppression, the U.S. can admit certain displaced persons as refugees. These are just some of the immigration-related

mechanisms available under U.S. law in the event of a humanitarian crisis. While these tools exist and are often utilized, there are no specific criteria for how often and under what circumstances they are implemented. There is value in allowing a certain amount of discretion on the part of the Administration, but too much discretion can result in a vague understanding of what is available and what can be done most quickly and efficiently to respond to a particular crisis. Therefore, establishing a plan of action and identifying a set of criteria in advance of a crisis would allow the United States to respond in rapidly, flexibly, and with the most effective use of resources in the case of a humanitarian crisis. This type of decisive action is just what the U.S. exercised after the second World War, and it is time that we took assertive steps toward that type of posture again.

**E. TASK 2.1: CONTINUE AND ENHANCE INTER-AGENCY, INTER-SECTOR, AND INTERNATIONAL PARTNERSHIPS TO ERADICATE HUMAN TRAFFICKING, BRING VIOLATORS TO JUSTICE, AND PROVIDE RELIEF TO VICTIMS**

United States government agencies are already engaged in a strong effort to eradicate human trafficking. Because trafficking is a phenomenon that does not respect physical borders, and because victims are often recruited from overseas, a resolution to the problem requires international communication and partnerships as well. Currently, the Department of States does conduct diplomatic efforts to encourage other states to fight trafficking, from both the supply side and the demands side. Within the United States government, U.S. Immigration and Customs Enforcement investigate trafficking cases, the Department of Justice prosecutes violators, and U.S. Citizenship and Immigration Services issues special visas to trafficking victims. All of these efforts require significant interaction between the agencies and are vital to the elimination of an illegal practice which is essentially the modern-day equivalent of slavery. As trafficking, like other forms of organized crime, could also be a source of funding for terrorism and other illegal activity, it is critical that it be thwarted. The U.S. government should continue and enhance those efforts already underway and should explore additional methods and tools to prevent new trafficking cases.

**F. TASK 2.2: ENGAGE U.S. AND INTERNATIONAL PARTNERS TO IDENTIFY MORE INNOVATIVE WAYS TO SCREEN APPLICANTS**

Heightening the sophistication of our screening processes requires a significant amount of research and resources devoted toward new technology and modernized methods. The U.S. government cannot carry out such a task alone. Fortunately, the United States is rich with non-governmental resources that can be directed toward scientific study of screening criteria. Additionally, the U.S. government is not the only source of information that can be implemented in the screening process. U.S. agencies should increase information sharing among each other, but should also reach out to international partners to increase the amount of data that can be used to vet each applicant for a humanitarian benefit.

The federal government should continue its efforts to engage both the private sector and academia in conducting research toward new screening techniques. Examples for improvement include: enhanced methods to capture fingerprints and to run checks on them from remote locations such as refugee camps or areas of natural disaster; improved techniques for utilizing DNA to verify familial relationships and reduce fraud; increased and more timely sharing of law enforcement and other relevant data between countries for use in the screening of applicants; and improved methods for using behavioral characteristics to determine the likelihood that an applicant is giving false information or has the intent to cause harm.

As the science in each of these areas advances, so can the ability of the U.S. government to reduce the risk of admitting an applicant who poses a threat to safety in the United States. It can also, eventually, save the time and resources spent on legitimate applicants for whom intrusive and lengthy screening can cause additional trauma and mistrust of the United States.

**G. TASK 3.1: SET A FIVE-YEAR DEADLINE FOR TEMPORARY PROTECTED STATUS**

The current implementation of the Temporary Protected Status benefit is an inefficient use of resources when viewed through the lens of a greater humanitarian immigration strategy. The intent of TPS is sound in that it is meant to give discretion to



the U.S. government to provide temporary relief to particular countries suffering from internal conflict or an especially damaging natural disaster. However, in practice, TPS is not implemented in an effective manner.

Presently, there are approximately 340,000 individuals in the United State with TPS. As part of the TPS benefit, they are also authorized to work. Some of those recipients have been in this country since as long ago as 1991. Typically, a TPS designation lasts approximately 12 to 18 months, and then the Secretary of Homeland Security is required to decide whether the designation is extended or terminated. When the designation is extended, TPS beneficiaries must reregister with the U.S. government. The re-registration process includes a criminal background check for each application. Therefore, those TPS beneficiaries who have been in the United States for several years have undergone a successful criminal background check every 12 to 18 months since their original designation. By definition, this would be a very low risk population for having been vetted so many times.

Under current law, TPS beneficiaries are not eligible to adjust to lawful permanent resident status, no matter how long they have been present in the United States. Thus, they remain in a sort of legal limbo as they wait each 12 to 18 to learn of whether they may stay or be sent home. Each time the reregister, they pay a processing fee to the U.S. government. This fee is meant to cover the costs of completing the vetting process. If TPS were to be terminated, former beneficiaries would be required to leave the United States. If they did not leave, the responsibility would fall upon the U.S. government to remove them. The cost of removal is covered by tax money appropriated through the Congressional budget process. In Fiscal Year 2005, U.S. Immigration and Customs Enforcement conducted approximately 208,000 removals, more than half of which went to Mexico and more than 40% of which were convicted criminals.<sup>81</sup> Therefore, given a termination of TPS, it is unlikely that ICE would have the resources to conduct the necessary removals without additional appropriations from Congress.

Task 3.1 advocates putting a limit on every TPS designation. If after five years, country conditions have improved, the beneficiaries should be sent home. If the

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<sup>81</sup> Mary Dougherty, Denise Wilson, and Amy Wu, 1.

conditions continue to be severe, the beneficiaries should have the option of applying for permanent resident status. This would end the use of resources to conduct a re-registration process every 12 to 18 months and discontinue the frequent vetting of individuals who have already been determined to be low risk.

**H. TASK 3.2 – ENHANCE IMMIGRATION ENFORCEMENT, ESPECIALLY THE DETENTION AND REMOVAL PROGRAM, TO ENSURE THAT ASYLUM AND TPS APPLICANTS DENIED IMMIGRATION BENEFITS ARE REMOVED EXPEDIENTLY FROM THE UNITED STATES**

As demonstrated earlier in this thesis, current operational capacity and practices do not ensure that an alien, who has been denied a benefit and ordered removed, will be removed in a timely manner. This lack of an immediate consequence for fraudulent behavior decreases the integrity of the asylum system. Presently, U.S. Immigration and Customs Enforcement (ICE) deploys Fugitive Operations teams to locate, apprehend and remove those aliens with final orders of removal who have left the United States. In many cases, these “fugitives” have already been in the custody, or at least the presence, of the United States government. However, they have since disappeared and now it requires resource-intensive investigations to find them.

The fact that there is a need for a Fugitive Operations program at all is a sign that the immigration enforcement system has failed. Instead of directing additional resources toward finding and catching fugitives, it would be much more efficient to direct the resources toward *preventing* aliens with final orders from becoming fugitives. Enforcement resources should be targeted toward either detention programs, or alternatives to detention that would allow the government to track an alien who might have the incentive to flee. Decisive enforcement would like also deter other aliens from absconding. Right now, since the chance of a consequence is not very high, an alien with a removal order actually has an incentive to disappear. Given the current statistics, they will likely be able to fade into the shadows relatively unnoticed. This weakness in the immigration enforcement system must be addressed before the front end screening of applicants for the asylum program can have the integrity that it requires.

**I. TASK 3.3: ESTABLISH A PUBLIC REASSURANCE STRATEGY FOR THREATS PRESENTED OR CARRIED OUT BY A RECIPIENT OF OR AN APPLICANT FOR HUMANITARIAN IMMIGRATION BENEFITS**

As much as we try to reduce the risk of terrorism in the United States, we must accept the fact that we can never entirely eliminate it. We must also recognize that although our screening techniques will become increasingly more effective and sophisticated, there is still the possibility that someone could use one of our humanitarian immigration programs to enter the United States and conduct a terrorist attack. An attack under such circumstances could undermine the success of humanitarian immigration programs as a whole because both our decision-makers and the general public could see humanitarian programs as a vulnerability and want to close them down or restrict them so severely that they become ineffective.

As this thesis has argued, an effective set of humanitarian immigration programs are beneficial to the well-being of our own country. To halt them, even in the face of a terrorist act, would actually undermine our long-term success. Therefore, we must think through the problem now, rather than in the emotional heat that follows a catastrophe. We must decide how we would respond to the incident and what tools we could use to reassure the public so as not to induce irrational elements of fear.

This objective advocates the establishment of a planning effort to discuss and document steps that would be taken in the event of a terrorist attack by a recipient of humanitarian immigration benefits. History has shown us that the moments immediately after an attack, or an attempted attack, often lead us to make drastic conclusions without sufficient evidence. If we can develop even a skeleton of policy options and communications strategies to be rolled out after such an event, we can rely on those decisions as a starting point when we are faced with the emotion of an actual event. Conceptually, this is no different than the process of national level exercises conducted each year. However, it adds the goal of finding ways to protect our humanitarian immigration programs from undue obstacles.

## **J. CONCLUSION**

The strategy above provides opportunities for the United States to improve its current implementation of humanitarian immigration programs. The programs already exist, and some have been used over several decades to provide relief to the persecuted and those facing danger in their own homeland. However, in the current age homeland security strategists must look beyond our traditional practices. There are opportunities for us to use tools already available in support of our democratic principles to enhance our long-term security. The moral value of humanitarianism is obvious and well-practiced. There are new and frightening challenges in front of us compelling us to look beyond moral obligation toward the innovative strategic value that we can create.

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